# OFFICE OF THE

## **NAVAL INSPECTOR GENERAL**



# IG INVESTIGATIONS INVESTIGATION GUIDE AUGUST 2007

#### **Course Description**

This course is designed to prepare Department of the Navy (DON) Inspector General (IG) personnel and others, as assigned, to conduct IG investigations.

The course materials include:

- (1) **Online Training** available on Navy Knowledge Online in the e-Learning environment. The course is entitled, Naval Inspector General Investigations: The Basics. Navy IG personnel are required to complete the online training prior to attending the classroom Investigation Course. The online training is an "executive summary" of the Investigation Guide and includes sample documents such as an Investigation Report and Investigation Plan, which can be downloaded and edited in Microsoft Word or viewed in PDF format.
  - (2) IG Investigations Training Manual, which is comprised of the:
    - a. IG Investigation Slide Presentations
    - b. **Investigation Guide**, which is the text used during the class.
- (3) **IG Investigations Workbook**, which includes the case study and additional exercises designed to reinforce the material presented in class.

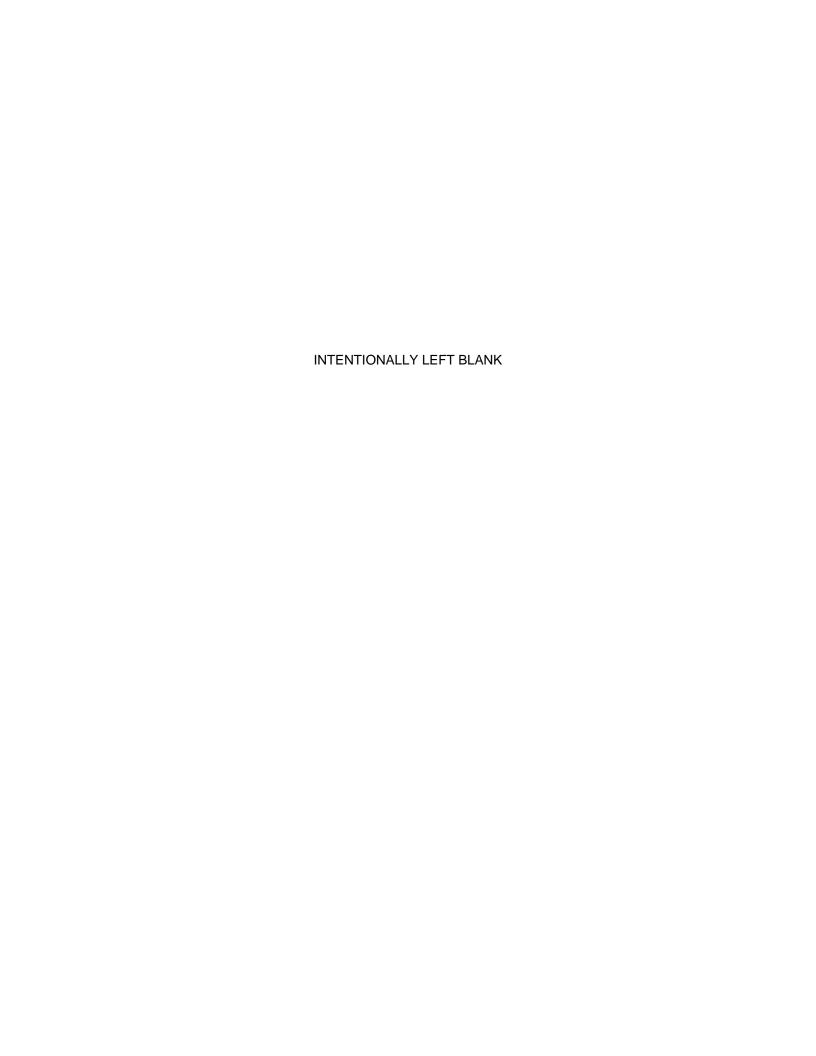
These materials provide you with a basic "tool box" for use when conducting investigations. The Guide and Workbook may change before each scheduled course to incorporate changes or supplemental material. Although not included in your course materials, the **Naval Inspector General's Investigations Manual** is the principal policy document. The materials discussed above supplement the Manual and do not replace or modify any policy with the exception of the Investigation Report format and any changes to procedures noted in SECNAVINST 5370.5B, Navy Hotline Program.

#### **Course Length**

The online training is a two-hour training course, which each student is required to complete prior to attending the 5-day Naval Inspector General Investigation course presented in a classroom setting.

#### **Course Objectives**

After completing this course, you should have the tools necessary to conduct a comprehensive investigation applying the four standards for conduct of investigations: timeliness, independence, completeness, and accountability.



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## **Chapter 1**

## Introduction

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#### 0101 Overview of the Naval Inspector General Organization

The Naval Inspector General (NAVINSGEN) acts as an impartial fact finder for the Secretary of the Navy (SECNAV). The Department of the Navy (DON) Hotline Program was established to promote command efficiency and to provide a method to receive and investigate reports of fraud, waste, mismanagement, military members' whistleblower complaints, improper referral for a mental health evaluation, and other related improprieties.

We also provide assistance to complainants. We make every effort to carefully screen each complaint to determine the appropriate action and refer individuals to the proper organization to address their concerns.

SECNAVINST 5370.5B, DON Hotline Program, U. S. Navy Regulations, SECNAVINST 5430.92B and SECNAVINST 5370.7B, require military and civilian personnel to report suspected wrongdoing to the chain of command. This allows the chain of command to resolve the matter at the lowest level. The DON Hotline Program provides an alternative to the chain of command when a complainant reasonably fears reprisal or believes the chain of command has been unresponsive. Individuals who believe their chain of command's review of an issue produced the wrong result will often submit hotline complaints for investigation. Generally, we do not investigate these complaints absent reprisal or systemic problems. We will, however, consider the issue for investigation if the complainant can provide evidence that the command's review was biased or flawed.

#### 0102 Policy for Conduct of Inspector General (IG) Investigations

IG investigating officers (IOs) should thoroughly and impartially investigate all non-frivolous, substantive allegations of improper conduct in a professional manner, without command influence, pressure, or fear of reprisal.

#### 0103 Purpose of IG Investigations

IG investigations establish sufficient facts to enable responsible authority to:

- Determine whether allegations are substantiated
- Decide what actions, if any, to take

#### 0104 Mission of the IG Organization

In broad terms, the mission of every DON IG organization is to inquire into matters impacting readiness, effectiveness, discipline, efficiency, integrity, ethics, and/or public confidence.

SECNAV has authorized NAVINSGEN to inquire into allegations of fraud, waste, mismanagement, reprisal for military members, and improper mental health evaluations.

#### 0105 Mission of the DON Hotline

The mission of the DON Hotline is to provide a method to receive and investigate reports of fraud, waste, mismanagement, and other related improprieties. The DON Hotline is primarily for use when the chain of command cannot, or will not, take appropriate action.

#### 0106 Policy for Conduct of Inspector General (IG) Investigations

The DON shall demand and enforce the highest ethical standards from its members, fairly and efficiently manage its resources and people, and exercise a fiduciary responsibility over taxpayers' dollars. It is DON policy to encourage the identification of problems in these areas and to swiftly correct them. The DON Hotline program is designed to eliminate fraud, waste and mismanagement by identifying problems and potential solutions.

#### 0107 Authority to Conduct Investigations

**Statute.** 10 U.S.C. §§ 5014 and 5020 authorize NAVINSGEN to investigate matters affecting discipline or military efficiency.

**Regulation.** SECNAV has given NAVINSGEN broad investigative authority in the U.S. Navy Regulations and the following instructions:

<u>SECNAVINST 5430.57G</u> "Mission and Functions of the Naval Inspector General"

<u>SECNAVINST 5430.92B</u> "Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties within the Department of the Navy"

SECNAVINST 5370.5B "DoD/Navy Hotline Program"

**SECNAVINST 5800.12B** "Investigation of Allegations Against Senior Officials of the DON"

**SECNAVINST 5370.7C** "Military Whistleblower Reprisal Protection"

IG investigators' authority is generally set forth in command instructions, policy memos, or similar documents.

#### 0108 Credentials

Commands have the authority to issue credentials or letters of authorization to their Inspectors General and other personnel assigned to conduct an IG investigation.

(front)

#### **United States of America**

#### **Department of the Navy**

This is to certify that

Mr. Investigator

whose photograph and signature appear below is an

## ASSISTANT INSPECTOR GENERAL for INVESTIGATIONS

#### OFFICE OF THE NAVAL INSPECTOR GENERAL

The bearer is authorized under the laws of the United States of America to conduct enforcement and investigative activities, including intervieweing witnesses, collecting evidence, and entering such places to inspect records, as necessary.

**Authorizing Official** 

**Signature** 

No. 175

RETURN TO: Command (Address)

(back)

IF FOUND, DROP IN ANY MAILBOX. POSTAGE GUARANTEED.

UNAUTHORIZED USE OR POSSESSION OF THESE CREDENTIALS WILL MAKE THE OFFENDER LIABLE FOR PROSECUTION UNDER 18 U.S.C. § 499, 506 AND 701.

#### 0109 Four Standards for Conduct of IG Investigations

The standards for conduct of Inspector General (IG) investigations are:

- 1. Independence
- 2. Completeness
- 3. Timeliness
- 4. Accountability

Investigators shall conduct IG investigations in an **independent**, **complete**, and **timely** manner and, where appropriate, provide sufficient information to permit responsible authorities to correct systemic faults, to take remedial action, and to hold subordinates **accountable** for their actions.

#### 0109.1 Independence

Individuals and organizations tasked to conduct an IG investigation will be free, in fact and appearance, from any impairment of objectivity and partiality.

Consider the following before initiating an investigation:

**Positional Authority**: Navy personnel assigned to an IG billet, including Command Evaluation personnel, have positional authority and may conduct investigations into allegations involving more senior subjects.

An investigator who does not have positional authority should evaluate whether he/she is independent. For example:

- 1. **Junior to the subject of the investigation:** You may be allowed to conduct the investigation as long as you are accompanied by a more senior person during interviews.
- 2. **Subject Matter Experts (SME):** If you are a SME who is junior to the subject, you may conduct an investigation involving a more senior subject.
- 3. Bias or prejudiced against the subject of the investigation: An individual, who currently has or has had a social or professional relationship with the subject of an investigation, or is biased in favor or prejudiced against the subject for any reason, may not be impartial.

An IO who feels he/she cannot be impartial or objective for any reason, should contact the tasking authority for guidance on how to proceed.

#### 0109.2 Completeness

**This is the most critical standard**. Investigators must address initial and emergent allegations, state the rules and regulations, apply the standards to the facts, and provide a thorough analysis of how they reached their conclusions. The final report must "stand alone" and be:

- 1. Logically organized
- 2. Accurate
- 3. Clear
- 4. Concise

Before forwarding an IR to the immediate tasking authority, complete the Post Investigation Checklist to ensure you:

- 1. Identified and researched applicable standards
- 2. Gathered evidence to address each allegation
- 3. Interviewed the complainant, witnesses and subject and re-interviewed, if necessary
- 4. Addressed all of the original allegations and referred or addressed emerging allegations
- 5. Based conclusions on logical facts, as presented
- 6. Documented corrective action, if completed, in the report

**NOTE:** Immediate tasking authorities should return an incomplete investigation to the investigator noting deficiencies in the Post Investigation Checklist.

#### 0109.3 Timeliness

This is the most often violated standard. Prolonged investigations impact retirement, benefits, promotions, and other personnel actions. Tasking authorities and investigators must complete investigations within the allotted amount of time. If the investigation cannot be completed, the IO submits a Progress Reports to the immediate tasking authority to request an extension.

**NOTE:** As a rule, you should complete an investigation, to include the endorsements, within 90 days of receipt of the complaint.

#### 0109.4 Accountability

The Investigating Officer (IO), responsible authority, and tasking authority each play a role in reporting and taking corrective action. Remember, corrective action may result from either an unsubstantiated or substantiated allegation.

**Investigating Officer** – The IO conducts a thorough investigation and prepares an Investigation Report (IR) to provide responsible authority with the information necessary to take corrective, remedial, administrative, or disciplinary action.

**NOTE:** DON is organized by echelons (tiers). Echelon 2 Inspectors General are assigned Additional Duty to NAVINSGEN to conduct hotline investigations. The Echelon 2 IGs conduct the investigation or task a lower Echelon command with conducting the investigation. Upon completing the report, the IO forwards the investigation through the chain of command for endorsement and appropriate action.

The IO may report corrective action in one of the following ways:

- 1. If the corrective action is pending when the IO completes the investigation (which is often the case), the IO forwards the report to the tasking authority without delay.
- 2. If the corrective action has been completed prior to completing the investigation, the IO includes the action taken in the disposition section of the report.
- 3. If the IO discovers a systemic problem as a result of the investigation, the IO includes specific recommendations on how to resolve the problem, e.g., training, rewriting an instruction, in the Recommendations section of the report. This applies whether the allegation is substantiated or not.

**NOTE:** See Chapter 6: Writing the Report, Recommendations and Disposition, for more information.

**Responsible Authority** - If the IR substantiates an allegation, the responsible authority **must** take and report corrective action to the tasking authority in writing. Types of corrective action include correction of systemic faults, remedial action to hold subordinates accountable, and disciplinary or administrative action, as needed, to hold the subject accountable.

- 1. Who took the corrective action?
- 2. What type of corrective action was taken?
- 3. The date the responsible authority took the action

**Tasking Authority** – The tasking authority is responsible for tracking and timely reporting corrective action to the next higher level. The tasking authority reviews the IR for completeness, independence, and the status of the corrective action before

forwarding the report to the next higher level in the chain of command. The tasking authority should complete the Post Investigation Checklist to ensure the investigation and the IR are independent, timely, complete, and appropriately address corrective action. The tasking authority then prepares an endorsement, attaches the completed Checklist, and forwards the report to the next higher level tasking authority.

## **Chapter 2**

## **PHASE 1: PRE-INVESTIGATION**

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#### 0201 Phase 1: Pre-Investigation Overview

This chapter covers material you will need to know when conducting a preliminary analysis of a complaint. The chapter discusses processing the complaint, identifying the issues and applicable standards, determining whether a full investigation is appropriate, drafting allegations, and the notification process. It includes a discussion of the Naval Inspector General 4-Step Hotline Complaint Submission Procedure and other complaint processes available to complainants.

#### 0202 Pre-Investigation Phase – Preliminary Inquiry

NAVINSGEN and lower Echelon IG Command Hotlines are dedicated to eliminating fraud, waste, and mismanagement within the Department of the Navy. Another important, but less well-known role of the IG, is the referral and assistance aspect of their job. Much like an emergency room conducts triage to determine exactly how to manage each patient who enters, IGs review each complaint and make the determination to investigate, refer, transfer, assist the complainant, or dismiss and take no further action. While individuals are encouraged to resolve complaints at the lowest level, the IG hotline process serves as an alternative to the command.

#### 0202.1 Purpose of the Preliminary Inquiry

As discussed above, not all matters reported to an IG are appropriate for an IG investigation. The purpose of the Preliminary Inquiry (PI) is to gather information about the complaint to determine whether the matter warrants an investigation with the least adverse impact on the **reputation** of the subject(s) and the command.

#### 0202.2 Preliminary Inquiry vice Full Investigation

No clear line divides the PI from the full investigation. The complainant interview, review of the applicable standards and documents with subject matter experts and legal counsel, are considered part of the PI. However, once you notify the subject or command about the investigation, interview witnesses who work with the subject, or prepare an investigation plan, the PI is over and the full investigation has begun.

Anyone assigned to conduct an investigation should know how to conduct a PI and how to report the results. As discussed in Chapter 6, Writing the Report, a Letter Report format vice the Investigation Report is used to report the findings of a PI. A memorandum for the record is often sufficient to document the results of the PI. Tasking authorities may conduct a cursory PI to determine if the allegations warrant an investigation, but the IO is generally expected to do the preliminary analysis.

#### 203 Pre-Investigation Phase – Actions

The pre-investigation phase consists of the following actions:

- Receive the Complaint
- Analyze the Complaint
- Determine the Action
- Draft the Allegation(s)
- Notify the Complainant of the Action

#### 0204 Receive the Complaint

The majority of requests for investigations come through the hotline complaint system. Proper development of information during the initial contact with complainants, whether by telephone or in-person, is critical to the success of an IG investigation. IG personnel analyze each hotline complaint to determine the appropriate action. An IG may receive a request directly from an individual; receive a referral from an outside source; or receive a complaint from another IG. IG personnel may encourage complainants to seek redress using the chain of command or to use a grievance process established to address specific issues.

Each contact with the IG should be recorded and maintained in a case management system.

#### 0204.1 Method of Receipt

**Anyone** can file a complaint to include a public citizen, military member, Federal civilian employee, or contractor. The hotline was established to receive complaints about DON operations, organizations, functions, or personnel. Complaints may be filed via the following means:

- Letter, Fax, E-mail, Website Online Form
- Telephone
- Walk-in

#### 0204.2 Written Complaints

IG hotline personnel encourage complainants to submit complaints and supporting documentation in writing. Written complaints can take many forms to include regular mail,

fax, and website online form, but e-mail is the most common method used due to the ease of submission and accessibility to internet websites that facilitate e-mail transmission. Generally, someone is assigned to receive and process the complaint. The office responsible for processing hotline complaints for the Naval Inspector General is the Investigation Division (N6). N6 receives complaints from DoD IG and directly from complainants. Generally, NAVINSGEN personnel do not conduct hotline investigations, but instead transfer the complaint or task an investigation to the Echelon 2 IGs specifying a completion date and report format. The exception to this general rule is a complaint that alleges senior official misconduct. NAVINSGEN has a Special Inquiries Division (N5) that handles all investigations into alleged wrongdoing by Department of the Navy senior officials which are defined as active duty, retired, or reserve military officers, in, or selected for, Grades 0-7 and above; current or former civilian members of the Senior Executive Service (SES); and, current or former Department of the Navy Presidential Appointees.

#### 0204.3 <u>Telephone Complaints</u>

When receiving a request for assistance over the telephone, IG personnel should complete a telephone intake form to properly document the call. Remain objective and supportive during the interview to gain as much information as possible. Explain the IG policy regarding anonymity and confidentiality to the complainant. Ask them to review the Navy IG website 4-Step Hotline Complaint Submission Procedure (see **0204.8**).

Explain to the anonymous complainant that Investigating Officers cannot contact anonymous complainants for additional information which may compromise the IG's ability to determine whether the issues warrant an IG investigation. Although it is not a requirement, encourage callers submit the complaint in writing. In many cases, callers are presenting concerns which affect them emotionally. Experience has shown that complainants are able to gather their thoughts and give the IG more detailed information in writing.

For more information, review the procedures and techniques for telephone interviewing outlined in Chapter 4.

#### 0204.4 Walk-In Complaints

Each IG office should establish its own policy regarding walk-in complainants. NAVINSGEN does not have the staff to accept walk-ins so complainants are asked to file the complaint online on our website, by telephone, or in writing. If your command does accept walk-in complaints, screen the individual in a semi-private area before moving to a private room for interview. Sometimes complainants are very emotional and angry when they seek the IG's assistance. If you feel threatened by the complainant's demeanor, request someone accompany you during the interview. Generally, the approach to walk-in complainants is the same as for all others. The process described in 204.5, Interview the Complainant, can be adjusted to fit specific circumstances and limitations of space, manpower, etc.

#### 0204.5 Interview the Complainant (In-Person)

The purpose of the initial interview is to gather information necessary to determine whether an investigation is warranted.

Afford the individual sufficient time to discuss the complaint and ask questions to develop pertinent facts. Be careful to maintain control of the interview. At the end of the interview, ask, "What do you want the IG to do?" This focuses the complainant and helps to ensure the complaint is of Navy interest and appropriate for IG action. Ask the individual making the request whether any previous actions have been taken to resolve the matter and if so, who, when, what results, etc.

Complete the Hotline Intake Form to ensure the following questions are addressed:

- 1. Who engaged in the wrongdoing?
- 2. What did they do (or fail to do) that constitutes the wrongdoing?
- 3. What standard, rule, regulation, law, etc. was violated when this happened?
- 4. When did this happen?
- 5. Where did it happen?
- 6. How did it happen?
- 7. Why does the complainant think this happened, i.e., intentional, negligent, lack of training, motive of personal gain or intent to injure another, etc.?
- 8. How the Navy is adversely affected by what happened?
- 9. Who was harmed by what happened, and in what manner; and that corrective remedial, or disciplinary action, if any, does the complainant think should be taken, and why?

Do not promise and investigation. Inform the complainant someone will review the matter and provide a response.

**Note:** Once a complainant makes an allegation, he/she cannot withdraw the allegation or prevent you from proceeding with the investigation.

#### 0204.6 Anonymous Complainants

A complainant who does not provide a name or means of contact is anonymous. You are **required** to interview the complainant unless he/she filed the complaint anonymously, requested confidentiality, or you cannot locate him/her. Since you are unable to interview anonymous complainants, you will have to rely solely on the allegations/issues as stated in the complaint to conduct your investigation.

#### 0204.7 Confidential Complainants

A complainant who reveals his/her identity to an Inspector General and requests it not be released to anyone without his/her approval is a confidential complainant.

Confidentiality may be necessary to protect an interviewee from reprisal or to ensure

he/she fully discloses all relevant information to the IG. IG personnel are not authorized to release the complainant's identity unless given permission by the complainant. It is important to inform the complainant from the onset that IG personnel cannot guarantee absolute confidentiality, as disclosure may be required during the investigation or in the course of corrective action.

**Note:** A good rule of thumb is to treat the complainant as a witness throughout the investigation instead of labeling them as the "complainant."

#### 0204.8 Naval Inspector General Hotline Complaint Submission Procedures

The Naval Inspector General has developed guidelines for complainants who wish to file a hotline complaint. These procedures are outlined on the NAVINSGEN website at <a href="https://www.ig.navy.mil">www.ig.navy.mil</a>. IG personnel responsible for receiving hotline complaints should direct complainants to review the 4-Step Hotline Complaint Submission Procedure, or go through it with them.

The complainant is first asked to review the **4 categories of complaints below before filing with the Inspector General** to ensure the Hotline Complaint Submission Procedure is the appropriate process to resolve the issue.

1	If you have already filed a complaint with another office/agency concerning your issue and the investigation is ongoing, continue to pursue your complaint with that office until the investigation is completed. We will not initiate an investigation into a complaint that is already being addressed using another process.
2	If you have already contacted a member of Congress concerning an issue, please continue to pursue resolution of your complaint with your Congressman as we can not duplicate the process you have already initiated by contacting a member of Congress.
3	If you need assistance with correcting your official military personnel record and you are no longer on active duty, the appropriate agency to address your request is the Board for Correction of Naval Records (BCNR).
4	If you are requesting assistance with dependent/former dependent financial support, please read the information on this website's Questions & Answers page regarding dependent support.

If none of the above applies, the complainant is asked to review the following 4-Step Hotline Complaint Submission Procedure to determine if he/she should file a complaint:

Procedure Step 1:	Determine the best method to address your issue.
Procedure Step 2:	Review the Frequently Asked Questions (FAQS) so that you will know what to expect when you file a hotline complaint.
Procedure Step 3:	Prepare your complaint for submission to an IG
Procedure Step 4:	File a complaint with an IG

The 4-Step Hotline Complaint Submission Procedure located on the Navy IG website is outlined below:

#### Procedure Step 1: Determine the best method to address your issue.

We encourage complainants to first attempt to resolve their issue using the chain of command. Generally, the best and quickest method of resolving an issue is to contact the lowest possible level of the chain of command. Discuss the problem with members in the chain of command such as the legal staff, union representative, chaplain, human resource personnel, equal opportunity advisor, immediate supervisor, and Commanding Officer. Our experience has shown, with few exceptions, commands are responsive to complainant's issues.

We also refer complainants to other processes established by the Department of the Defense or the Department of the Navy to resolve issues. If you need additional assistance researching an issue or determining the appropriate office to contact, review the "<a href="How to Resolve a Complaint">How to Resolve a Complaint</a> (A-Z)" list. If you don't find your issue on the list, contact your legal officer, Staff Judge Advocate, Public Affairs Officer, or local Inspector General for assistance.

#### Military members may want to bring the issue to the attention of:

- His/Her immediate or second level supervisor
- Department Head
- Commanding Officer (see "Commanding Officer Request Mast")

#### Civilian personnel may want to bring the issue to the attention of:

- His/Her immediate or second level supervisor
- Commanding Officer
- Local Human Resource Office
- Human Resource Service Center

If the matter cannot be resolved with the chain of command, consider filing a formal grievance.

#### Military members may consider filing a grievance.

- Complaint of Wrongs Against the Commanding Officer (Article 138)
- Complaint of Wrongs Against a Superior Outside your chain of command (Article 1150)
- Equal Opportunity (EO) complaint, if you think you have been sexually harassed or discriminated against
- Military members, who feel they have been reprised against by a superior in their chain of command, may file a Military Whistleblower complaint with DoD IG or the Naval Inspector General.

#### Navy Federal civilian employees may consider filing a grievance.

- Your Human Resource Office or Human Resource Service Center
- Merit Systems Protection Board
- Administrative Grievance Procedure
- Alternative Dispute Resolution
- Equal Employment Opportunity (EEO) complaint, if you think you have been sexually harassed or discriminated against
- Navy Federal civilian employees, who feel they have been reprised against by a superior in their chain of command, may file a complaint with the Office of Special Counsel.

#### **Procedure Step 2: Frequently Asked Questions**

The following questions provide information about hotline policy and procedures that you should review before you file a complaint:

#### 1. What is the purpose of the Hotline?

The purpose of the Hotline Program is to identify and eliminate fraud, waste, and inefficiencies in the operation of the Navy. To be effective, the program requires all personnel to be vigilant against the possibility of illegal or improper acts, and to report to the chain of command, or an IG, any improprieties in this regard.

#### 2. Who may use the Hotline?

Anyone may file a hotline complaint.

#### 3. What issues should you report to the Hotline?

The IG investigates matters involving:

- Abuse of Title or Position
- Bribes/Kickbacks/Acceptance of Gratuities
- Conflicts of Interest
- Ethics Violations, e.g., Misuse of Official Time,/Gov't Property/Position
- False Official Statements/Claims
- Fraud
- Gifts (Improper receipt or giving)
- Improper Referral for Mental Health Evaluations
- Mismanagement/Organization Oversight (Significant Cases)
- Political Activities
- Purchase & Travel Card Abuse
- Reprisal (Military Whistleblower Protection)
- Safety/Public Health (Substantial/Specific)
- Systemic Problems
- Time and Attendance (Significant Violations)
- Travel Fraud (TDY and TAD)
- Waste (Gross)

#### 4. What other avenues of redress are available to resolve complaints?

Many issue brought to the attention of the IG are not appropriate for an IG investigation. The "How to Resolve a Complaint (A-Z)" list was developed by IG personnel to assist complainants in determining the best method to address an issue. Complainants are encouraged to review the list before filing a complaint with an IG.

#### 5. How do you submit a hotline complaint?

We encourage complainants to submit the allegation(s) in writing by e-mail, fax, letter, or using an online complaint form, when available. Our experience has shown that written complaints are more organized, provide more details, and are less emotional. We will evaluate the complaint and request more information, if necessary. Keep in mind, if we conduct an investigation and if the complainant has identified him/herself, we will conduct an interview and request additional information at that time. The "Contact a Navy IG" links to a list of IG command addresses, phone and fax numbers, and e-mail addresses. Review the list to find the appropriate office to submit the complaint.

#### 6. Do you have to identify yourself when you file a complaint?

No. Complainants may request to remain anonymous or identify themselves and ask that their identity remain confidential.

**Confidential**: Release your identity to the IG with the understanding it will not be released to the investigator, or identify yourself with the understanding that only the IG and the investigator will know who you are.

If you request confidentiality, we will make every effort to protect your identity from disclosure; however, we cannot guarantee confidentiality since disclosure may be required during the investigation or in the course of corrective action.

**Anonymous**: If you file your complaint anonymously, we will not know who you are. As such, we will not be able to contact you to request additional information or to give you the results of the investigation.

You may consider establishing an e-mail account using an internet service provider to submit an anonymous complaint; however, we will not respond to anonymous complaints submitted in this way since we have no way of verifying who you are.

#### 7. Does the IG take telephone complaints?

IG personnel will provide assistance if contacted by telephone. If you wish to submit a complaint, we will suggest you submit your complaint and any supporting documentation in writing. Based on experience, we have found this to be the best way to serve you. If the IG conducts an investigation, you will be contacted for an interview.

#### 8. Is there a time limit to file a complaint?

Generally, you should submit your complaint within 90 days of the date the alleged wrongdoing occurred. However, we will consider complaints over 90 days old if you can demonstrate you were unable to meet the time requirement due to extraordinary circumstances or unforeseen delays.

#### 9. What can you expect when you file a hotline complaint?

An investigator will evaluate your complaint and determine if the matter warrants investigation or if we should refer your complaint to other authorities or the command for a response. We will send a confirmation letter to let you know what action was taken on your complaint if you provide your name and address. We are unable to notify anonymous complainants of the results of an investigation if we do not have an e-mail address.

Don't expect instant action on your request... be patient.

#### 10. What does the IG expect from someone who makes a complaint to the hotline?

The IG expects you to answer the questions listed on Step 3. Remember, the more information you give the IG, the better he/she can assist you. Be prepared to provide supporting evidence.

In accordance with SECNAVINST 5370.5B, the use of the Hotline program to file knowingly false complaints is a violation of 18 U.S.C. § 1001 (2003) and Title 18, Chapter 47, United States Code (Uniform Code of Military Justice). Those suspected of willfully and knowingly filing false complaints are subject to prosecution and/or administrative action.

#### 11. Do we guarantee we will conduct an investigation?

Generally, the Naval Inspector General and the local IGs do not accept a complaint if:

- (1) As stated above, you do not submit your complaint within 90 days
- (2) You have not addressed your issue with the local command
- (3) You have not used an appropriate complaint process for military and civilian employees such as Board for Correction of Naval Records, Equal Opportunity/Equal Employment Opportunity, Administrative Grievance Procedure, etc.
- (4) Another investigation is being conducted into the matter.

#### 12. How long does it take to investigate a complaint?

Most investigations are completed within 90 days, but can take longer depending on the

complexity of the case.

## 13. How do you determine the status of your complaint or obtain a copy of the report?

Contact the IG office where you submitted your complaint. While the investigation is ongoing, we can only tell you whether the case is open. Once the investigation is closed, the IG will send you a letter to inform you that your allegations were substantiated or unsubstantiated. If you wish to obtain more information about the case, you may submit a request under the Freedom of Information Act to the IG office that conducted the investigation to obtain a copy of the report.

## 14. If you do not agree with the results of the investigation, can you ask for reconsideration?

Yes. If you have new information to support your complaint, the case may be reconsidered. If, on the other hand, you are merely unhappy because you do not agree with the outcome, the IG will not conduct another investigation.

#### Procedure Step 3: Prepare your complaint for submission to an IG

If you have reviewed "How to Resolve a Complaint (A-Z) and determined your issue is appropriate for the IG, begin gathering the information you will need to answer the following questions:

- Who...Service member's or employee's full name, rank/grade, and duty station
- What...Specific wrongdoing and why you believe the activity was misconduct, to include the rule, regulation or law you think they violate
- Where...Location where the wrongdoing occurred
- When...Specific dates and times
- How much...estimated dollar loss
- Why and how...Describe why and how you believe the individual perpetrated the offense

Review the Hotline Complaint Form for additional assistance in filing a complaint and don't forget to include:

- What you have done to try to resolve the issue
- What you want the IG to do

Remember, the more you help us the better we can assist you.

#### Procedure Step 4: Contact a Navy Inspector General

Your local IG should be your first point of contact if you are considering filing a hotline complaint. Although there are exceptions, when determining which office to file a complaint, a good rule of thumb is:

- Submit issues concerning shore commands that support ships and aircraft to Commander, Navy Installations Command (CNIC) or one of the regional commands that report to CNIC.
- Submit issues concerning afloat or aviation commands to the command that has oversight responsibility of the ship or aircraft, i.e., USS GEORGE WASHINGTON falls under Commander, Fleet Forces Command, Norfolk.

You may also consider contacting the office located nearest you for assistance in ascertaining which office to submit your complaint. You should, however, not file a complaint with more than one office. The list below categorizes the IG offices by region. If you are unable to find the IG that services your command on these lists, contact the Naval Inspector General and we will assist you.

- West Coast Navy IG Offices
- East Coast Navy IG Offices
- Central United States Navy IG Offices
- Overseas Navy IG Offices
- Naval Inspector General
- U.S. Marine Corps IG
- DoD Inspector General

Do not promise an investigation. Inform the complainant someone will review the matter and provide a response.

**NOTE:** Once the complainant makes an allegation, he/she cannot withdraw the allegation or prevent you from proceeding with the investigation.

#### 0204.9 <u>Acknowledge Receipt of Complaint</u>

If the complainant is known and has provided an e-mail or mailing address, acknowledge receipt of the complaint in writing. If you determine a complaint warrants an investigation or if you need additional information, notify the complainant (if known) and arrange for an interview. This reduces concerns that no action is being taken regarding the complaint and minimizes the possibility of the complainant contacting other officials or agencies.

#### 0205 Analyze the Complaint

Determine whether the complaint is an allegation, a request for assistance, or a combination. Not all issues brought to the IG's attention require an investigation. As discussed below, some issues can be referred to another office or the chain of command, while others require a full investigation.

Many complainants contact the IG after they attempt to resolve an issue using the appropriate process because they are dissatisfied with the outcome. Generally, the IG does not accept complaints for investigation based solely on a complainant's dissatisfaction with the outcome of another process/investigation.

The IG is the appropriate venue for an inquiry into a complaint that has been addressed using the appropriate process and the complainant can provide evidence that:

- The matter was not addressed fairly and impartially; and/or,
- The process was flawed, i.e., an error was made or essential material facts were omitted that substantially affected the outcome of the decisions.

Upon receipt of a complaint of this nature, conduct a PI to determine whether or not an IG investigation is appropriate.

#### 0205.1 Matters Appropriate for an IG Investiation

Issues that warrant an IG investigation include, but are not limited to:

**Fraud** - Any intentional deception designed to unlawfully deprive the United States of something of value or to secure for an individual from the United States a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include, but are not limited to: the offer, payment, or acceptance of bribes or gratuities; making false statements; submitting false claims; using false weights or measures; evading or corrupting inspectors or other officials; deceit either by suppressing the truth or misrepresenting material fact; adulterating or substituting materials; falsifying records and books of accounts; arranging for secret profits, kickbacks, or commissions; and conspiring to use any of these devices. The term also includes conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.

**Waste** - The extravagant, careless or needless expenditure of government funds or the consumption of government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.

**Mismanagement** - A collective term covering, generally, acts of abuse and waste. Such practices include, but are not limited to, needless, extravagant, and careless expenditure of government funds or the consumption or misuse of government property or resources, resulting from poor management/supervision, deficient practices, systems, controls, or decisions.

**Military Whistleblower Reprisal** - Retaliation against a military member who discloses wrongdoing. To determine whether an allegation constitutes reprisal, four questions must be answered:

- Was the complaint a Protected Communication?
- Did an unfavorable personnel action occur as a result of the Protected Communication?
- Did management have knowledge of the Protected Communication before taking an unfavorable personnel action?
- Does the preponderance of the evidence establish that the "unfavorable" personnel action would have been taken absent the Protected Communication?

Improper Evaluation for Mental Health Evaluation (MHE) - Generally, an MHE is a clinical assessment of a service member for a mental, physical, or personality disorder to determine the member's clinical mental health status and and/or fitness and/or suitability for military service. This definition does not apply to voluntary self-referrals; diagnostic referrals requested by non-mental health care providers not part of the service member's chain of command as a matter of independent clinical judgment and when the service member consents to the evaluation; responsibility and competency inquiries conducted under the Rule for Court Martial of the Manual for Courts-Martial; interviews conducted under the

#### 0205.2 Matters Appropriate for the Chain of Command

The chain of command is the appropriate venue for many complaints. IG personnel should encourage complainants to resolve their complaints involving inappropriate conduct or administrative matters at the lowest level. Examples include complaints concerning counseling for unsatisfactory performance, minor time and attendance violations, minor disciplinary infractions to include theft, physical security, minor travel errors or credit card abuse, denial of leave, disparate treatment, letters of appreciation, awards and medals, and family and spousal support.

Informal complaints of wrongs may be handled through the Division or Command Master Chief, Division or Department Head and Commanding Officer's Request Mast. If the complainant has tried to resolve the issue informally and failed, he/she may want to file a formal complaint.

Service members may submit a formal complaint following the procedures outlined in NAVREGS Article 1150 (Redress of Wrongs Committed by a Superior) or Uniformed Code of Military Justice (UCMJ) Article 138 (Complaint of Wrongs Against the Commanding Officer). You should refer the complainant to a Legal Officer or Judge Advocate if he/she is interested in pursuing any of these complaints.

#### 0205.3 Matters Appropriate for Alternate Complaint Processes

Some matters brought to the attention of the IG may neither require nor are appropriate for an IG investigation. These issues may also arise during the course of your investigation.

Complainants are often unaware of other available remedies and contact the IG first. You are not obligated to conduct an investigation into every issue brought to your attention. You should make every effort, however, to assist the complainants by directing them to the appropriate office or agency.

Some examples of processes available to resolve complaints are:

<u>Board for Correction of Naval Records (BCNR)</u> - BCNR is the highest level of review within the Department of the Navy with respect to administrative and special courts-martial discharges. Members may request review or upgrade of a discharge from BCNR for all reenlistment codes, general courts-martial discharges and ALL discharges older than 15 years.

Naval Discharge Review Board (NDRB) - NDRB is designated to make final determinations as to whether discharges of former members of the Navy and Marine Corps were proper, just, and equitable under reasonable standards of naval law and discipline and to make changes, if warranted. The Board's decisions are subject to review by the Secretary. 10 U.S.C. § 1553, as implemented by SECNAVINST 5420.174c.

<u>Command Managed Equal Opportunity (CMEO)</u> If service members are unable to resolve their complaints informally, they may use the Navy Equal Opportunity (EO) Formal complaint form 5354/2 to file a formal EO/Sexual Harassment complaint.

- OPNAVINST 5354.1 outlines the Navy's EO policy
- SECNAVINST 5300.26 addresses the Navy's sexual harassment policy
- NAVPERS 15620 contains the Navy's Informal Resolution System (IRS) complaint procedures
- NAVPERS 5354/2 is the Navy's EO formal complaint form

<u>Equal Employment Opportunity Commission (EEOC)</u> - The EEOC is responsible for enforcing a number of federal laws prohibiting job discrimination, including:

- Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, or national origin)
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967 (protects individuals 40 or older)

- Titles I and V of the Americans with Disabilities Act of 1990 (ADA)
- Sections 501 and 505 of the Civil Rights Act of 1991

Merit Systems Protection Board (MSPB) - The Board's mission is to ensure Federal employees are protected against abuses by agency management, Executive Branch agencies make employment decisions in accordance with the merit systems principles, and Federal merit systems are kept free of prohibited personnel practices. Refer Federal civilian employees who complain about the following issues to MSPB:

- Removal
- Suspension of more than 14 days
- Reductions in grade or pay
- Furloughs of 30 days or less
- Performance-based removals or reductions in grade
- Denials of within-grade salary increases
- Reduction-in-force (RIF) actions
- Office of Personnel Management (OPM) suitability determinations
- OPM employment practice
- OPM determinations in retirement matters
- Denials of restoration or reemployment rights
- Terminations of probationary employees under certain circumstances

Many requests for investigations come from individuals who believe they have been wronged during the course of their exercise of a chain of command redress procedure. These requests often take the form of a hotline complaint in which it is alleged that the redress procedure produced the wrong result. Ensuring that people are treated fairly and in accordance with applicable law and regulation promotes the efficiency of the command and the Navy. However, the mission of IG organizations does not normally include assistance in the correction of wrongs in individual cases absent special circumstances such as reprisal or systemic problems. Because IG organizations do not serve as advocates for individuals, every reasonable effort should be made to direct individuals to the proper organization to address their concerns.

#### 0205.4 Matters that Require Special Handling

Some matters brought to the IG's attention require special handling by designated NAVINSGEN personnel or other agencies. If the allegation involves any of the following, STOP the inquiry and immediately contact the tasking authority or the appropriate office.

- Reprisal (Military and Civilian) (Contact NAVINSGEN or DoD IG)
- Senior Officials (Contact NAVINSGEN)
- Mental Health Evaluations/Referrals (Contact NAVINSGEN)
- Procurement Fraud (Contact Echelon 2 IG)
- Suspected Criminal Activity (Contact NCIS)

- Antideficiency Act (Contact tasking authority)
- Congressional Inquiries (Coordinate investigation and response with command congressional liaison)
- All investigations of Commanding Officers in the pay grade of O-6 (Contact NAVINSGEN)

An explanation of each of the above areas that require special handling is included at the end of this chapter.

#### 0205.5 Identify the Applicable Standards

Once you feel confident that the allegations fall within the purview of the hotline process and you have identified the appropriate issues for investigation, you are ready to begin identifying the applicable standard(s). Remember, if you cannot identify a standard, the allegation may not be appropriate for an IG investigation.

Identifying the applicable standard(s) is often difficult. Seasoned investigators rely on past experience and familiarity with the applicable rules and regulations. First-time investigators should conduct research using all available resources to include subject matter experts and the Staff Judge Advocate or command legal officer. Your primary objective during this phase of the investigation is to determine whether or not the alleged improper conduct violated a policy or rule.

NAVINSGEN developed a list of complaints IG hotline personnel most often address with direct links to the applicable rules, regulations, statutes, instructions, etc. and placed it on the public website at <a href="http://www.ig.navy.mil">http://www.ig.navy.mil</a> on the link "How to Resolve a Complaint (A-Z)." These lists do not include all issues brought to the IG's attention, but are a representative sample. Our goal is to help those who are considering filing a hotline complaint and IG personnel responsible for responding to issues.

The list is intended to be an informal reference and should not be construed as legal advice. IG personnel who conduct investigations should use the list as a starting point when researching the standard that applies to the alleged wrongdoing.

#### 0206 Determine the Action

You may conclude during the PI that a complaint does not fall within the purview of the Navy IG nor warrants further investigation for one or all of the following reasons:

- The action occurred, but did not violate a standard
- You are unable to identify a standard
- You are unable to pursue the investigation due to lack of sufficient information/leads
- The issue falls under the cognizance of another agency, office, command
- The issue is appropriate for resolution using one of the many grievance processes available to Navy employees
- You can provide the complaint with assistance to help resolve the issue

Actions you may consider are:

Transfer	Transfer ownership to another Navy IG command for information and appropriate action. Notify the complainant in writing that the complaint was transferred and to which office.
Refer	Navy IG personnel refer complaints directly to an office or agency outside of Navy IG channels, e.g., Army, Air Force, Office of Special Counsel, JAG.
Assist	Navy IG personnel assist complainants directly by informing them about alternative complaint processes or means to resolve the complaint.
Dismiss	Case closed because the complaint (more than likely anonymous) does not provide sufficient information to determine whether a violation occurred, the complaint is frivolous, or untimely.
	<b>Note:</b> In some cases, these complaints can be transferred to another Navy IG command for information.
Investigate	Investigating Officer tasked to conduct an inquiry or an investigation.

# 0206.1 "When" to Transfer a Complaint to Another Navy IG Office

lf:	And:	Then:
The subject is a Senior Official (Flag, Flag select, or SES	The complaint is received by any level other than NAVINSGEN	Transfer the complaint to NAVINSGEN
The complaint has not been addressed at the level where the alleged wrongdoing occurred.	The higher-level Command IG determines transfer to the lower-level IG is appropriate and no evidence of bias by the lower level Command IG exists.	Transfer the complaint to the lower-level Command IG
The military complainant alleges reprisal or improper referral for a mental health evaluation		Transfer the complaint to NAVINSGEN
The complaint presents a conflict of interest for the Appointing Authority or Inspector		Transfer the complaint to the next higher level Command IG
The subject is the Appointing Authority or a member of his/her immediate staff, or an Command IG staff member		Transfer the complaint to the next higher level Command IG (ISIC IG)
The subject is an NCIS agent	The complaint is received by any level other than NAVINSGEN	Transfer the complaint to NAVINSGEN
The subject is assigned to a higher level command than the Command IG that received the complaint		Transfer the complaint to the Command IG at the same command as the subject.

# 0206.2 "How" to Transfer a Complaint to another Navy IG Office

Step	Action
1.	Using complaint analysis, you determined the complaint is appropriate for the IG process. <b>Transfer</b> the complaint, in writing, to the Echelon IG that oversees the subject's command explaining your rationale.
2.	Notify the complainant (if known) in writing of the transfer.
3.	Document the case in local files as a 'Transfer', and close the case at your level.

# 0206.3 "When" to Refer a Complaint to a non-Navy IG Office

	Type of Complaint	Referral Agency
1.	Allegations regarding non-Navy organizations or agencies	Refer to specific agency, Service IG or DOD IG Hotline
2.	Anti-Deficiency Act violations	Refer to legal counsel for evaluation of complaint and conduct a Preliminary Inquiry (PI) to determine if the alleged wrongdoing is a violation. Refer to Assistant Secretary of the Navy, Financial Management Branch (FMB) if the PI determines the matter is an Anti-Deficiency Act violation.
3.	Criminal Offenses	Refer to NCIS. (SECNAVINST 5520.3 assigns primary responsibility to NCIS for the investigation of criminal offenses.) NCIS must review the case to determine if the United States Attorney or the appropriate convening authority may be interested in criminal prosecution. If there is such an interest, NCIS will handle the investigation. If not, NCIS will advise the IG organization that it declines to investigate.
4.	Procurement Fraud	Refer to the Acquisition Integrity Office (AIO), designated to handle fraud issues within the Office of General Counsel (OGC).

# 0206.4 "How" to refer a complaint to a non-Navy IG Office

Step	Action
1.	Using complaint analysis, you determine the complaint is not appropriate for the IG process, and <b>Refer</b> it to an agency outside Navy IG channels.
2.	Refer the complaint, in writing, to the appropriate agency explaining your rationale for Referral.
3.	Notify the complainant, in writing, of the <b>Referral</b> .
4.	Document the case in local files as a 'Referral', and close the case at your level.

# 0206.5 "When" to Assist a Complainant

	Type of Complaint:	Complainant should be directed to the following Agencies:
1.	Administrative Separations	Direct to Naval Legal Service Office, Staff Judge Advocate, General Court Martial Authority, which has review authority of proposed Administrative Separations, or BCNR depending on the type of Administrative Separation.
2.	Allegations against Military Defense Counsel	Direct to Chief Circuit Defense Counsel
3.	Allegations of homosexual conduct	Direct to Commanding Officer
4.	Allegations of reprisal by DoD contractors	Direct to DoD IG
5.	Appeal of fitness report (FITREP)	Direct to Commanding Officer, Chain of Command (above reporting senior), or, Appeal to Board for Correction of Naval Records (BCNR)
6.	Appropriated Fund employees— Conditions of employment (personnel policies, practices, and matters affecting working conditions)	Direct to servicing Civilian Human Resources Office (HRO) or Human Resource Service Center (HRSC) for action in accordance with civilian grievance system (either Administrative or Negotiated procedures IAW locally negotiated agreements.)
7.	Appropriated Fund employees - EEO issues (discrimination based on age, race, color, sex, religion, disability, or national origin);	Direct to the Equal Opportunity Office for processing.
8.	Appropriated Fund employees - Reprisal against a civil service employee.	Direct to the Office of Special Counsel (OSC) - an independent federal investigative and prosecutorial agency. <a href="http://www.osc.gov/">http://www.osc.gov/</a>
9.	Article 138, UCMJ (Complaint of Wrong)	Direct to legal counsel
10.	Article 15 (NJP), Letters of Reprimand or Censure (other than discrimination/reprisal)	Direct to chain of command or Area Defense Counsel, or OJAG
11.	Assignment Matters (Navy Reserve)	Direct to Commander, Naval Reserve Forces Command (COMNAVRESFORCOM)

12.	Assignment Matters (Navy)	Direct to the Bureau of Personnel (BUPERS) – Pers-44 (Officers) & Pers-40 (Enlisted) <a href="http://www.npc.navy.mil">http://www.npc.navy.mil</a>
13.	Change to Instructions/Regulation or current policies	Direct to appropriate Department of the Navy agency
14.	Claims against the government	Direct to SJA
15.	Contracting Issues	Direct to issuing contract unit
16.	Correction of Military Records	Direct to BCNR
17.	Discharge from Naval service	Direct to Naval Discharge Review Board unless the discharge falls into one of the following categories:  Older than 15 years; Awarded as the result of a general courtmartial; Involve physical or medical disability, or, Reenlistment (RE) codes.
18.	Exclusion from or Termination of Training	Direct to cognizant Training Command
19.	Discrimination (Military Members)	Direct to command. If unable to resolve, direct to Equal Opportunity representative at the next higher level of authority.
	Discrimination (Military Members – formal complaint)	Direct to Command Navy Equal Opportunity (EO) advisor to file a form 5354/2 complaint
20.	Discrimination (Navy civilian employees – informal complaint)	Direct to command. If unable to resolve, direct to Office of Civilian Human Resource Alternate Dispute Resolution Process.
	Discrimination (Navy civilian employees – formal complaint)	Direct to EEOC to file a formal complaint.
21.	Equal Opportunity Off-Base Housing	Direct to local Housing Office
22.	Hazardous Working Conditions (unsafe or unhealthy)	Direct to Safety channels
23.	Indebtedness	Direct to Defense Finance and Accounting Service or civil authorities. Commanding Officers do not authority to adjudicate claims, arbitrate or negotiate debts or Navy member's private obligations, or act as an agent or

		collector. Commanding Officers can only cooperate with creditors by Directing correspondence to the member.
24.	Landlord or tenant disputes	Direct to Command
25.	Medical treatment	Direct to patient affairs at appropriate Military Health Treatment Facilities (MTFs), TRICARE, or Navy Legal Service Office, Claims Division depending on the nature of the complaint.
26.	Misuse or abuse of government vehicles	Direct to Command or local IG
27.	Non-Appropriated Fund (NAF) employee conditions of employment issues or reprisal	Direct to servicing NAF Employment Office (conditions of employment) or the IG, DoD for reprisal allegations.
28.	Punishment under UCMJ	Direct to Area Defense Counsel or OJAG
29.	Re-Enlistment Matters (Navy)	Direct to BCNR
30.	Suggestions	Direct to local command or appropriate agency
31.	Support of Dependents	Direct to Command, Naval Legal Service Office, or DFAS
32.	Tri-Care Complaints	Direct to Tri-Care Benefits Services Office
33.	Unprofessional Relationships/ Adultery	Direct to Command

# 0206.6 "How" to Assist a Complainant

Step	Action
1.	Using complaint analysis, you determine the complaint is not appropriate for the IG process, and <b>Assist</b> the complainant by directing him/her to the appropriate agency or grievance process.
2.	Notify the complainant, in writing, and <b>Assist</b> him/her by explaining the appropriate complaint resolution procedures.
3.	Document the case in local files as an <b>Assist</b> , and close the case at your level.

# 0206.7 "When" to Dismiss a Complaint

	Considerations: IF	and	THEN
1.	If complaint analysis discloses the complaint is frivolous in that there is no recognizable wrong, or violation of the law, regulation, or policy		Dismiss the complaint.
2.	The complaint analysis discloses a matter within the IG's purview, but the amount of time that has elapsed is such that there is little or no potential to determine the facts and circumstances surrounding the alleged wrongdoing	There are no extraordinary circumstances justifying the inquiry or special Navy interest in the matters alleged.	Dismiss the complaint.
3.	The complainant has not provided sufficient information to properly conduct the complaint analysis.		Dismiss the complaint.
4.	The complainant files a complaint that is already the subject of an investigation by another investigative agency or office.	The complaint addresses the same matter addressed in the IG complaint.	Dismiss the complaint.
5.	The complaint analysis discloses a matter within the IG's purview, but the allegations have already been investigated and reviewed by a Navy IG office.	The complainant provides <b>no</b> new evidence or information that justifies further investigation.	Dismiss the complaint.

## 0206.8 "How" to Dismiss a Complaint

Step	Action
1.	Using complaint analysis, determine if the complaint should be <b>dismissed</b> .
2.	Notify the complainant, in writing (if possible) of the dismissal ensuring the rationale for the <b>dismissal</b> is clearly communicated.
3.	Document the case in local files as a "Dismissal" and close the case.

# 0206.9 "When" and "How" to Investigate

Chapters 3, 4 and 5 in this Guide discuss in detail how to conduct an investigation.

#### 0207 Draft the Allegation(s)

An allegation is a declaration or assertion of fact that if proven constitutes adverse information. Once the issues have been identified, they should be written as allegations to be investigated. Consider the following:

- a. Investigators should not rely on the complainant's description or characterization of the facts, but should formulate their own statements of the allegations. Complainants usually speak in broad terms of wrongdoing. You must carefully analyze the complainant's allegations, and restate the allegation(s) in your own words using neutral, non-biased and non-emotional terms based on your understanding of each issue.
- b. An allegation to be investigated should be expressed in neutral, non-emotional terms. It should be formulated in such manner that substantiation of the allegation (a "yes" answer to the question "did this happen?") demonstrates there has been some form of impropriety.
- c. The allegation must clearly identify the subject, the alleged improper conduct, the applicable rule or regulation, and the date(s). In general, the allegation should be worded in the following manner:

**Who?** Someone (the subject)

**Did What?** Improperly did, appeared to do, or failed to do something (a single act or omission)

**In violation of what standard?** (a law, rule, regulation, instruction, or policy)

When (date)

d. The success or failure of your investigation depends on your ability to properly draft an allegation.

#### 0207.1 Framing an Allegation

Review the complaint and any additional information submitted by the complainant thoroughly to fully understand exactly what the complainant is alleging. Determine which issues are violations of some standard, e.g., a law, rule, regulation, instruction or policy. Research the standards to determine whether they apply to the alleged wrongdoing and ask your legal staff or a subject matter expert for assistance in developing the allegation. Generally, if the alleged wrongdoing does not violate a rule, law, or regulation, it may not be appropriate for an investigation.

#### 207.2 One Subject - One Act of Impropriety Rule

Write a separate, properly formatted allegation for each subject and the alleged act of impropriety. Avoid combining subjects and acts of impropriety when you draft the original allegations.

If your investigation substantiates the same allegation(s) against more than one subject, you may combine the subjects and the alleged wrongdoing into one allegation when writing your Investigative Report (IR). However, the best practice is to write a single allegation for each subject and each act of wrongdoing in the event the report is used to administer corrective action or is released under the Freedom of Information Act or the Privacy Act.

#### 207.3 Partially Substantiated Allegation

**You cannot partially substantiate an allegation**. You can avoid partially substantiating an allegation by following the "one subject – one act of impropriety" rule. Partially substantiated allegations will not be accepted in a final report – the allegation must clearly be substantiated or unsubstantiated.

#### 207.4 Allegation Sample

#### **ALLEGATION SAMPLE**

(1) That Ms. Sylvia Chase, GS-14, Naval Air Systems Command, Patuxent River, Maryland, improperly used her official time when she did not attend a mandatory working group in violation of DoD 5500.7-R, Joint Ethics Regulation, 5 CFR Part 2635.705, Subpart G, Misuse of Position, Use of Official Time, on the afternoon of 3 March 2003.

#### 0208 Notify the Complainant of the Action

The individual assigned to acknowledge receipt of a complaint should have sent a message to the complainant stating, "Your complainant has been received and someone is reviewing it."

The IG office then sends a letter or e-mail to the complainant (if known) to inform him/her the complaint:

- Was referred to another service or agency
- Was transferred to another Navy IG command
- Should be directed to another office or agency, and assist with explanation
- Was dismissed with no further action
- Will be Investigated

If the complainant asks for a status while the investigation is ongoing, tell him/her the investigation is open and you may not discuss the investigation. Do not provide any details! Inform the complainant that your responsibility is to gather and report the facts. Also explain that higher tasking authority is responsible for:

- Taking corrective, remedial, or disciplinary action
- Notifying the complainant, in general terms, regarding the results of the investigation.

#### 0209 Summary

- Always interview the complainant (if known)
- Draft the allegations in the correct format
- Don't forget to ask the W, W, W, W, W, H questions
- Ask what the complainant wants the IG to do for him/her
- Notify the complainant of your decision to conduct an investigation

#### **Special Types of Cases**

# Reprisal (Civilian Government Employees)

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. OSC's basic authorities come from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, 5 U.S.C. 1213, and the Hatch Act.

http://www.osc.gov/

The Civil Service Reform Act of 1978 (CSRA), 5 U.S.C §1212-1215 and 2302 protects the whistle blowing activities of civilian employees. Reprisal for protected whistle blowing is called a prohibited personnel practice. Civilians who commit a prohibited personnel practice may be disciplined.

#### Reprisal (Military Personnel)

NAVINSGEN and DoD IG accept complaints from military members that allege reprisal.

DoD Website www.dodig.osd.mil

Military Whistleblower Protection DoD 7050.6 (3 June 2000)

The Military Whistleblower Protection Act, Title 10 U.S.C. 1034, as amended, prohibits interference with a military member's right to make protected communications to members of Congress; Inspectors General; members of DoD audit, inspection, investigation or law enforcement organizations; and other persons or organizations (including the chain of command) designated by regulation or administrative procedures. A protected communication is any lawful communication to a Member of Congress or an IG, as well as any communication made to a person or organization designated under competent regulations to receive such communications, which a member of the Armed Services reasonably believes reports a violation of law or regulation (including sexual harassment, unlawful discrimination, mismanagement, a gross waste of funds or other resources, abuse of authority, or a substantial or specific danger to public health or safety).

# Mental Health Evaluations/ Referrals of The National Defense Authorization Act Members of the Armed Forces for Fiscal Year 1993 (Public Law 102-

If you determine a mental health evaluation was used in a manner in violation of DoD 6490.1, report the violation to NAVINSGEN.

Refer to the "Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations," IGDG 7050.6, February 6, 1996.

DoD Website: www.dodig.osd.mil

See Chapter 8, for more information pertaining to Improper Mental Health Evaluations.

for Fiscal Year 1993 (Public Law 102-484) established criteria for commanddirected mental health evaluations. DODINST 6490.1 (01 Oct 97). SECNAVINST 6320.24A implemented the Act.

#### DoD Directive 6490.1:

- Establishes the rights of service members referred by their commands for mental health evaluations;
- Establishes procedures for outpatient and inpatient mental health evaluations that provide protection to members referred by their commands for such evaluations;
- Prohibits the use of command referrals for mental health evaluations in reprisal against military members who make a communication protected by statute or directive; and,
- Incorporates guidelines on psychiatric hospitalization of adults prepared by professional civilian health organizations.

#### Senior Officials

If you determine a Navy senior official is the subject of a complaint, report the violation to the NAVINSGEN or DoD IG in writing within 2 workdays of receipt.

DoD Directive 5505.6 and SECNAVINST 5800.12A, "Investigation of Allegations Against Senior Officials of the Department of Defense" assign responsibilities and prescribe procedures to ensure appropriate DoD and DoN authorities are apprised of allegations against DoN senior officials that warrant investigation.

DoN senior officials include military officers selected for flag rank and civilians selected for executive service. Allegations include a violation of criminal law, including the UCMJ; standards of conduct and Government ethics; abuse of authority; statutory post-Government service restriction; or a matter not included above that can reasonably be expected to be of significance to the Secretary of Defense, Secretary of the Navy, the Chief of Naval Operations (CNO), the Commandant of the Marine Corps, DoD IG, or NAVINSGEN.

#### Suspected Criminal Activity

Incidents of criminal offenses coming to your attention must be immediately referred to Naval Criminal Investigative Service (NCIS) whether occurring on or off an installation or ship, and regardless of whether they are being investigated by State, local, or other authorities.

See Naval Criminal Investigative Service (NCIS) Web site.

#### www.ncis.navy.mil

NCIS provides a number of services to include general criminal investigations, computer crime investigations, foreign counterintelligence, and Naval security programs.

SECNAVINST 5520.3 assigns primary responsibility to NCIS for the investigation of criminal offenses. A major criminal offense (felony) is defined as one punishable under the UCMJ by confinement for a term of more than one year. In such an instance, contact NAVINSGEN and NCIS.

NCIS must review the case to determine if the United States Attorney or the appropriate convening authority may be interested in criminal prosecution. If there is such an interest, NCIS will handle the investigation. If not, NCIS will advise the IG organization that it declines to investigate.

#### **Congressional Inquiries**

NAVINSGEN's role is to receive, task, track, review and respond to congressional inquiries. We receive them directly from members of Congress as well as from the Office of Legislative Affairs (OLA), Secretary of the Navy, Chief of Naval Operations, White House, other agencies, and national organizations.

NAVINSGEN tasks 80% of the inquiries to Echelon 2 commands and conducts the inquiry in 20% of the cases.

Two types of inquiries:

**Official requests** - made on behalf of a Congressional committee. If you receive these requests, refer them to NAVINSGEN.

Personal requests - made by members of Congress on behalf of a constituent or themselves. Handle these inquiries in the same manner as hotlines and requests by individuals. Advise OLA of the request and report final action.

There is no statute or regulation that provides for Congress to task DoN IG organizations to perform IG investigations.

Congressional inquiries are treated in the same way as a Navy hotline investigation, applying the same regulations. However, the time allowed to complete the investigation is reduced; 60-day tasker to the Echelon 2 and 90-day response to the correspondent. The investigator must address all of the allegations, interview the complainant, and discuss what, if anything, the Navy did wrong. The inquiries sometimes involve taskings to multiple commands.

NAVINSGEN's review may direct a follow-up investigation or response.

Contact NAVINSGEN Special Inquiries Division with questions regarding congressional inquiries.

#### **Antideficiency Act**

NAVINSGEN either conducts a preliminary inquiry or tasks the Echelon 2 command to conduct a Preliminary Inquiry into the circumstances surrounding the complaint. If during the Preliminary Inquiry we determine the allegation is a violation of the Antideficiency Act, we forward the complaint to the Assistant Secretary of the Navy, Financial Management Branch (FMB), for investigation.

Upon receipt of FMB's report, NAVINSGEN forwards it to the command for corrective action if any allegation(s) were substantiated. The case remains open until the command reports it has taken all corrective action.

Additional training material may be found on the Naval Financial Management Career Center Website www.nfmc.navy.mil/ASMC-PDIServiceDayInfo.html

DoD Instruction 7000.14, "DoD Financial Management Policy and Procedures" established the criteria for enforcing requirements, principles, standards, systems, procedure, and practices necessary to comply with financial management statutory and regulatory requirements applicable to DoD.

# **Chapter 3**

# **Phase 2: Plan the Investigation**

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#### 0301 Phase 2: Plan the Investigation Overview

This chapter introduces the actions you will take to plan an investigation. It discusses assigning an Investigating Officer (IO), mentoring and training the IO, and the elements of an Investigation Plan.

#### 0302 Plan the Investigation

During this phase, you will assign, mentor, and train an investigating officer, and prepare the Investigation Plan.

#### 0302.1 Assign an Investigating Officer

An IG investigation may be conducted by an Inspector General, a member of the Inspector General's staff, or a person trained by the Naval Inspector General in the conduct of investigations. You may also choose to assign other Navy personnel, who would be considered one-time investigators.

After you have selected the person(s) who will conduct the investigation, the investigating officer (IO) should be given an appointment letter. This letter gives the IO authority to interview and collect evidence, restricts the release of information, states investigation is the IO's only duty, and establishes the time allowed to complete the investigation.

#### **O302.2** Plan the Investigation: Mentor and Train the Investigating Officer

The most effective way to mentor and train the IO is to establish a partnership or investigative team. This team consists of the IO, an experienced IG investigator (mentor), subject matter experts, and legal staff. The Command IG staff should be prepared to provide administrative support while the investigation is ongoing.

To build an effective partnership, we recommend that the IO meet with the mentor twice within one week of receiving the tasking. In addition to these initial meetings, the mentor should be available to assist the IO throughout the investigation.

During the first meeting, the mentor explains to the IO how to access IG NKO online training. The mentor also explains how to use the templates and investigative references available on the NAVINSGEN website.

During the second meeting, the mentor provides one-on-one instruction on such things as complaint analysis, drafting allegations, gathering evidence, investigation plan, report format, post-investigation checklist, and corrective action requirements. The mentor should also provide guidance on military whistleblower protection, the function of the Office of Special Counsel for civilian reprisal, and improper referral for mental health evaluations.

#### 0302.2 Prepare an Investigation Plan

Prepare the Investigation Plan (referred to hereinafter as the Plan) once you complete your preliminary analysis. The Plan is the **written outline** of how you intend to carry out the investigation. Use the Plan as a checklist to ensure you cover all necessary points. Although you will draft your Plan at the start of your investigation, you must update it continually to:

- Document completed steps
- Reflect changes as the investigation progresses

The Plan does not need to be elaborate or formal. At a minimum, include a **written** statement of the allegations and a list of witnesses you plan to interview. A written Plan is important in the event you suddenly become ill or you are otherwise unable to complete the investigation. You may include **all** of the elements listed below in your Plan or combine some of the elements.

**NOTE:** Before initiating the interviews, discuss the Plan with your tasking authority to ensure you have addressed all of the issues.

#### **303.1** Prepare an Investigation Plan: Elements of an Investigation Plan

- a. Interview Sequence Plan
- b. Interview List (Witness List)
- c. Contact List
- d. Notification List
- e. Document List
- f. Allegations List
- g. Chronology of Events
- h. Logistical Plan
- i. Background Information
- j. Outline of Proof

**NOTE:** Update the Plan continually. Keep a dated copy of every revision of the Plan.

#### 0303.2 Interview Sequence Plan

The Interview Sequence Plan (referred to here as an Interview Plan when combined with other lists) lists the witnesses you plan to interview, the order of the interviews, the allegations you intend to discuss, and the questions you intend to ask. The Interview Plan should include:

- Comments about the witnesses, e.g., friendly, neutral, adverse.
- Tentative questions for each witness, generally, start with open-ended, general questions leading to more specific.
- A list of documents you intend to obtain from each witness and a copy.

As a general rule, interview the complainant first and the subject last. You should delay notifying the subject that you are conducting an investigation until you arrange an interview. You will eliminate the possibility that the subject may try to intimidate or, in some cases, reprise against the complainant and other witnesses.

In some instances, the subject may be interviewed first. The Privacy Act requires you to "collect information to the greatest extent practicable directly from the subject when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal Programs." When possible, obtain documents or physical evidence such as airplane tickets, travel orders, etc., before interviewing the subject if you believe the information will provide all the evidence necessary to prove or disprove an allegation.

The subject(s) may also give you documents to prove his/her innocence or admit to the alleged misconduct prior to an interview, allowing you to conclude the investigation without interviewing others.

#### 0303.3 Interview List

The Interview List identifies the persons you will interview. You may also include information from the Notification and Contact List if it is easier to maintain all of this information in one document.

#### 0303.4 Contact List

The Contact List facilitates the preparation of the Interview List. You can use the list to keep track of the persons you notified about the investigation. Your list may include:

 Complainants, subjects, and witnesses, in addition to cognizant COs, XOs, supervisors, local IG office personnel, JAGC or OGC attorney, and technical experts; and, - The witness name, title, rank or grade, address, phone number and other pertinent information, to include his/her role in the investigation.

#### 0303.5 Notification List

The Notification List identifies everyone you should inform that you are conducting an IG investigation and the dates you notified them. The Notification List is often a part of the Contact List.

#### 0303.6 Sample Interview Plan

The following **sample** shows an Interview Plan that combines the three elements above with the Interview Sequence Plan.

Sample Interview Plan				
(Combined Interview Sequence Plan, Notification List, and Contact List)				
ORDER	INTERVIEWEE	CATEGORY	ALLEGATIONS & DOCUMENTS	QUESTIONS
1	CAPT Frank Smith, (301) 757-3456	Commanding Officer, COMNAVAIRSYSCOM		20 June 02 – Notify CAPT Smith that you are conducting an investigation.
2	LT Kris Young, (301) 757-8702	Staff Judge Advocate, COMNAVAIRSYSCOM		20 Jun 02 - Notify LT Young that you are conducting an investigation.
3	Lisa Ponds	Subject Matter Expert (SATO)	2	Any restrictions on changing reservations?
4	Taylor Rutkowski (301) 757-2105		1, 2 Ms. Chase's Travel Orders & Travel Claim	Who requested to attend conference? Who approved?
5	Paula Collins NAVAIR, Level II Team Leader, PMA 277 (301) 757-4430, GS-13	Witness	1	Where did you eat lunch on 3 March? With whom? When did you leave? When did you return to the conference? Who were you with? Which working group did you attend that afternoon? Was Ms. Chase in that group? Did you see her?
6	Mr. Randall Lopez, Conference Chairperson	Witness	List of Conference Attendees; Conference Schedule of	Was Ms. Chase scheduled to be on the Network Users' working group panel on 3 March 2003? Did she attend? Did she contact you on 3 March or 4 March to explain why she didn't attend?

7	Ms. Armandina Sanchez	Witness	1	When did Ms. Chase leave the Rio Grande on 3 March 2003? Who did she ride with to and from the restaurant? What working group did you attend on the afternoon of 3 March 2003 and 4 March?
8	Sylvia Chase NAVAIR, Deputy Program Manager, PMA 277 (301) 757-2209	Subject Interview Last	1, 2 Travel Orders Travel Claim JER § 2635.705 2 JTR C2001A	Who did you have lunch with on 3 March 2003? How many working groups did you attend? How much were you reimbursed for trip?

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#### 0303.7 Document List

The Document List identifies the documents you need and acts as a checklist. Our sample includes an optional "comment" column for indicating planned use of each document. Include both existing and potential records and their relevance to the investigation.

Obtain and analyze pertinent documents, e.g., Official Personnel File (OPF), e-mail, calendars, and internet files, prior to conducting interviews. Note the location, date obtained, and any additional comments in the Document List.

Sample Document List				
DOCUMENT	LOCATION	DATE OBTAINED	COMMENTS	
Travel orders (Chase)	PSD	6/25/03	#67895	
Time and Attendance Records (Chase)	COMNAVAIRSYSCOM	6/25/03	For 4-5 Mar 2003	
Travel Claim (Chase)	COMNAVAIRSYSCOM	6/25/03	#67902	

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#### 0303.8 Allegation(s) List

The Allegations List provides a quick overview of the nature and scope of the investigation. Identify each alleged wrongdoing or impropriety and the applicable rule or regulation and include the following:

- Each allegation you intend to investigate.
- Allegations you refer to another command for action with an explanation for your decision.
- Emerging allegations you believe warrant investigation based on facts developed during the course of the investigation or additional information.

#### **Sample Allegations List**

- (1) That Ms. Sylvia Chase improperly abused her official time by not attending a working group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2 § 2635.705, Use of Official Time.
- (2) That Ms. Sylvia Chase returned from San Diego to Reagan-National Airport vice Dulles Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of the Joint Travel Regulations (JTR), Chapter 2, § C2001A, Transportation Modes, Accommodations, Transportation Requests, Baggage and Mileage Rates.

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#### 0303.9 Background Information

The Background section includes:

- The origin of the hotline complaint;
- A summary of the complaint;
- Optional information about earlier investigations or ongoing investigations (EEO, etc.) and any other background information that might establish a precedent for this case.

#### **Sample Background Information**

**Origin of Complaint.** DoD (# 72033) received the complaint on 10 May 2003 and tasked NAVINSGEN on 30 May 2003; NAVINSGEN (# 20030435) received DoD complaint on 4 June 2003 and tasked COMNAVAIRSYSCOM on 8 June 2003; NAVAIRSYSCOM (# H02-034) received the NAVINSGEN tasking letter and complaint on 12 June 2003 and tasked to the IO on 20 June 2003

**Summary of complaint.** The complainant alleged three COMNAVAIRSYSCOM employees, Ms. Sylvia Chase, Ms. Paula Collins and Ms. Marie Powell, were on temporary duty (TDY) from 1-5 March 2003 while attending the C4I conference in San Diego, California. The complainant alleged that Ms. Chase did not attend the afternoon conference session on 3 March 2003 and did not return to the conference on 4 March 2003. The caller also alleged that Ms. Chase returned to Reagan-National Airport, Washington, D.C., vice Dulles Airport, as scheduled, and did not pay the additional costs for the flight change.

**Search of database.** The COMNAVAIRSYSCOM database did not reveal any previous substantiated allegations against Ms. Chase.

#### 0303.10 Chronology of Events

The Chronology of Events outlines the order in which events occurred. It is important to have a good understanding of what happened and when before beginning your interviews.

Create a chronology of events based on your understanding of the complaint and update it as you obtain additional information. You can use the chronology to bring a new investigator up-to-speed on the case.

	Sample Chronology of Events
Date	Event
1 Mar 02	Subjects departed Reagan National for C4I conference in San Diego.
2 Mar 02	Subjects attended conference as scheduled.
3 Mar 02	Subjects attended morning session at conference and broke for lunch.
	Ms. Sanchez and Mr. Papas drove together to a nearby restaurant for lunch.
	Ms. Chase and Ms. Collins were seen at the restaurant having lunch together.
	Ms. Collins requested a ride back to the conference from Ms. Sanchez
	Mr. Lopez, conference chairperson and panel moderator, gathered participants together to begin session.

	Network User's Group started at 1300.
	Ms. Chase was not present at the panelist's table at 1300.
4 Mar 04	Ms. Chase was not present at the Network User's Group.
5 Mar 04	Ms. Chase returned to Reagan-National Airport.
Any misu	FOR OFFICIAL USE ONLY - PRIVACY SENSITIVE se or unauthorized disclosure may result in both civil and criminal penalties.

## 0303.11 Logistical Plan

The Logistical Plan describes transportation and travel arrangements and identifies Points of Contact (POCs). The Logistical Plan should include the following:

- Travel arrangements;
- Local transportation;
- Lodging;
- Interview rooms;
- Number of investigators required for interviews; and,
- Office space and equipment.

Sample Logistical Plan		
Itinerary	POV depart on 1 Jul 03 Est return 8 Jul 03	
Lodging	Best Western (301) 757-9023	
Local contact #	(301) 757-2314	
Equipment	Tape recorder Laptop computer	
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#### 0303.12 Outline of Proof

The Outline of Proof is the criteria used to determine whether or not an allegation is substantiated. It should include a list of applicable standards and how each standard applies to the facts of your case.

Sample Outline of Proof			
Rule/Regulation	Topic	Elements of Proof	
DOD 5500.7-R, JER, Chapter 2 § 2635.705	Establishes requirements for use of official time	Use of official time	
2 JTR C2001A	Ms. Chase's flight to Reagan-National	Use of government contract flights	
2 JTR C2001A	Ms. Chase's reimbursement of additional fees	Traveler's Cost Liability when government contract flight not used	
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#### 0303.13 Maintaining the Investigation Plan

The Investigation Plan changes and expands during the course of your investigation. Some helpful hints to assist you in maintaining your Plan are:

- Make a copy for the case file;
- Update your Plan continually;
- Highlight the pertinent sections; and,
- Modify your allegations, as necessary.

# 0304 Summary

- Assign the investigating officer and provide him/her with appointment letter
- Form an Investigation team and mentor/train the investigating officer
- Make sure the Investigation Plan is in writing and update it as often as necessary

# **Chapter 4**

# Phase 3: Conduct the Investigation Gathering Information & Interviewing

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#### 0401 Conduct the Investigation Overview \*\*\*

This chapter discusses in-briefing and out-briefing senior management, and gathering information. It discusses in greater depth how to prepare for an interview and the elements of an Interview Plan, explains the five phases of an interview, provides interviewing techniques, and sample documents. Additionally, this chapter reviews common problems associated with interviewing and conducting an investigation.

#### 0402 Notify Senior Management of Investigation

Notify senior management of **all** involved commands, as a matter of protocol and courtesy, before you start your on-site investigation. You must also remind **management**, **subjects**, and **witnesses** to refrain from discussing the investigation in order to protect reputations and avoid compromising the investigation. How and when you notify personnel involved in the investigation can exacerbate or minimize:

- Invasion of privacy
- Damage to reputations
- Risk of compromising the investigation

Brief management only on your decision to conduct an investigation – do not provide details! You may inform the command about the **general nature** of the investigation, if it does not compromise the investigation.

#### Sample Command In-Briefing

- We are from the COMNAVAIRSYSCOM Inspector General's office and are here to investigate a hotline complaint.
- We anticipate conducting interviews for about 3-4 days and will primarily limit our discussions to (military and/or civilians). At this time, we do not anticipate questioning (officers and/or enlisted personnel and/or civilians).
- We are not, and neither should you be, interested in determining or knowing the identity or motive of the complainant. As a reminder, complainants are protected from reprisal under 4 U.S.C. 2302b8 and 10 U.S.C. 1034, the civilian and military Whistleblower Protection Acts.
- We are here on behalf of the Commander, Naval Air Systems Command. We understand investigations are intrusive and disruptive, but we will complete the interviews as soon as possible.
- As in any IG investigation, we have access to all persons, files, records, notes, etc. in accordance with SECNAVINST. We will arrange our own interviews. When you brief command personnel, please inform them that if they are contacted for an interview, they should cooperate with investigators. Additionally, they should be told not to discuss information about the interview with others without our permission. Also, no one should infer anything if called for an interview. We will be interviewing numerous people to gather background information. Interviewees may or may not be questioned about the allegations in the complaint.

#### 0403 Gather information Evidence \*\*\*

The next step is to gather information (evidence). The three types of evidence are **statements**, **documents**, and **physical objects**.

You will use evidence to establish and evaluate the facts. You will use the facts to prove or disprove the allegations, draw conclusions, and make recommendations.

#### 0403.1 Statements

Information you obtain from interviewing witnesses may include their first-hand knowledge of the events or an accounting of what other people said in their presence. You must probe the witnesses for problems with perception, memory, bias, etc.

You must also make a clear distinction between the witnesses' recitation of facts (direct evidence) and his/her interpretation of those facts (opinion). Also, ask the witness for the facts that support his/her opinion.

#### 0403.2 Documents

You may also collect documents as physical evidence during your investigation. When necessary, obtain a document to prove its existence (a contract) or to establish its contents (the contract was signed by a specific person.)

**NOTE:** We do not normally require original or certified copies of documents for IG investigations.

#### 0403.3 Physical Objects \*\*\*

You may use a physical object to demonstrate its existence or identity. For example, the serial number on a computer found in a private residence could identify it as Government-owned property.

Statements, documents and physical objects, may be categorized as **direct** or **circumstantial** evidence, which includes **hearsay**.

### 0403.4 Direct Evidence

You use direct evidence to prove or disprove a fact through the first-hand knowledge or observation of a witness, through the text, pictures, or graphics of a document, or through the existence and characteristics of a physical object. Direct evidence is best because it reduces the need to draw inferences from the evidence to reach conclusions.

**Example:** Ms. Sylvia Chase's travel orders showed her supervisor authorized her to depart her place of residence on 1 March 2003 to attend a C4I conference in San Diego, California, from 2 March 2003 to 4 March 2003, and to return on 4 March.

Direct evidence supports Ms. Chase complied with the travel orders.

#### 0403.4 Circumstantial Evidence 494

You use circumstantial evidence to prove or disprove a fact through the (presumed) existence of a logical relationship between the evidence and the fact at issue. The logical relationship itself may be subject to question, usually must be explained, and sometimes leaves room for interpretation or controversy. Therefore, you must evaluate circumstantial evidence critically and attempt to corroborate it with other evidence.

**Example:** The following scenario is based on Ms. Armandina Sanchez's statement about her recollection of the events surrounding lunch at the Mexican restaurant on Wednesday, 3 March 2003:

Ms. Sanchez stated she saw Ms. Sylvia Chase drink margaritas at a Mexican restaurant and told investigators that Ms. Chase did not return to the conference.

This is **circumstantial evidence** that Ms. Chase had too many margaritas.

**Note:** If the issue of whether or not Ms. Chase had too much to drink during lunch on Wednesday was critical to proving/disproving the allegation, you would consider using Ms. Sanchez's statement, if other witnesses corroborated her testimony.

You would ask Ms. Chase questions to determine whether or not she may have had too much to drink. If Ms. Chase provided medical records to document a visit she made to the hospital for food poisoning that day, you would include all of the witnesses' testimony regarding this incident in your IR and reconcile the conflicting testimony.

#### 0403.6 Hearsay Evidence WA

You may use hearsay, a form of circumstantial evidence, in your investigation. The accuracy of the hearsay statement depends on someone other than the witness who provides you the information. You should try to corroborate hearsay by interviewing others who may have more direct, or first-hand, knowledge of the facts in question.

**Example:** Ms. Sanchez stated, "Toti Papas told me he saw Ms. Chase order more than two margaritas during lunch on 3 March 2003."

In this example, Ms. Sanchez has second-hand knowledge of the event in question since she did not personally witness Ms. Chase ordering more than one drink. You would corroborate this evidence with Mr. Papas before including it in your report.

#### 0403.7 Material Fact v. Immaterial Fact 🐲 \*

The facts you gather may be material or immaterial to the investigation. A fact is essential, or material, to the case when you need it to evaluate the issue. A fact is immaterial, or non-essential, if it is has no importance to the issue.

**Example:** Allegation 1 states Ms. Sylvia Chase improperly made a claim on her travel voucher for travel to San Diego 1-4 March 2003, claiming she was on travel 1-4 March 2003.

The fact that Ms. Chase tells you during the interview that she was on travel from 1-4 March 2003 is **material** since you need that information to evaluate the issue.

The fact that Ms. Chase tells you during the interview that she is married is **immaterial** and you should not include that information in your investigation.

#### 0403.8 Relevant v. Irrelevant Evidence \*\*\*

Use relevant evidence, which tends to make a material fact more or less probable, to prove or disprove an alleged fact.

**Example:** Allegation 1 states Ms. Sylvia Chase improperly made a claim on her travel voucher for travel to San Diego 1-4 March 2003, claiming she was on travel 1-4 March 2003.

The information you obtain from travel vouchers, airline tickets, etc., is **relevant evidence**, which you may use to prove or disprove the allegation.

The information that Ms. Chase shared with you about her two children is **irrelevant**, as it has no bearing on the facts of the case.

#### 0403.9 Standard of Proof

Standard of proof is the degree of certainty you apply to the evidence to substantiate an allegation.

The standard of proof for an IG investigation is the **preponderance of the credible evidence**. This means it is "more likely than not" – 51% or greater – that an event occurred.

If the weight of the evidence does not clearly tip the scale in one direction or the other, continue the investigation.

You must decide what happened. When witnesses disagree, or the evidence is conflicting, your job is to reconcile the differences. Under these circumstances, consider updating or reviewing your Investigative Plan, interviewing more witnesses, and/or searching for other documents.

In the end, you may have to choose between conflicting versions of events. If this occurs, you should discuss which version is more credible and why. This, in large part, depends on your evaluation of the testimony and other evidence.

#### 0404 Interviewing

The spoken word is usually the greatest source of investigative evidence and often the best evidence. The purpose of an interview to is gather information. The investigator's primary goal is to elicit and record information from the complainant, subject, and every important witness. Your investigation is not complete until you have accomplished this goal. Proficient interviewing assures a high degree of accuracy in fact development, helps to prove or disprove the alleged wrongdoing occurred, prevents surprise testimony from arising later, and may help impeach witnesses who change their stories.

These materials cannot replace practical experience or an investigator's independent study of interviewing techniques. Effective interviewing is a skill that must be learned by specialized training and/or experience. Most people learn to interview by "trial and error", watching others, or constant practice. Learning the basic concepts of the proper way to conduct an interview and practicing these methods is critical to your success as an interviewer.

#### 0404.1 Qualities of a Good Interviewer \*\*\*

The interviewer has one goal – to report the objective truth. You will develop the qualities and personal attributes required to be a good interviewer with training and practice. Honesty, integrity, and the ability to convey to the interviewee that you seek only the truth regarding the matter under investigation are the keystones for success as an investigator.

#### 0404.2 Interviewing Goals 494

Obtain information from the complainant, the subject, and witnesses during telephone interviews or in person (preferably in person). Some rules to follow when conducting an interview are:

a. Establish rapport with the interviewee to make her/him feel comfortable and at ease.

- b. Emphasize that you seek only the truth.
- c. Listen attentively, evaluate the interviewee's responses to your questions carefully, and take good notes.
- d. Maintain self-control, remain objective, and unemotional throughout the interview, although it can be difficult if the witness is uncooperative or reluctant.

#### 0404.3 Interview Sequence Plan 499-4

**Preparation.** Preparation is the key to a successful interview. Obtain as much information as possible on the details of the case, the background, the habits and character of the persons involved. This helps you develop the most effective interview procedures.

**Interview Sequence Plan.** Before you conduct any interviews, create an Interview Sequence Plan for each witness to establish:

- a. Who you will interview
- b. The order of the interviews
- c. The category of interviewees (complainant, witness, subject)
- d. The allegations that pertain to each interviewee
- e. The questions you intend to ask

**Interview Plan.** The Interview Sequence Plan is an Interview Plan that includes the order you intend to conduct the interview. The Interview Plan for each witness should include the type of interview, physical and psychological factors

#### 0404.4 Type of Interview

Your approach will differ depending on the category of interviewee (subject, witness, complainant, subject matter expert), and the degree of interviewee cooperation. Some interviewees require a slightly different approach, so you may need to employ specialized interview techniques, depending on the type of interviewee. Plan your approach and make a note in your Interview Plan.

#### 0404.4 Physical and Psychological Factors \*\*

**Physical Factors**. The physical environment can have a tremendous impact on your ability to conduct a successful interview. The physical environment also establishes what the interviewee will and will not be permitted to do during the interview. Keep the following in mind when conducting an interview:

- a. Choose an appropriate location to minimize noise, movement, interruptions, and witness anxiety. When possible, choose a room located away from the subject's work area.
- b. Choose an appropriate office to conduct the interviews. You can enhance the interviewee's focus with a well-lighted, moderately sized, private room in comfortable settings.
- c. Minimize noise and interruptions. Do not accept phone calls or visitors during the interview.
- d. For the majority of interviews, limit communication barriers such as desks, tables, and personal items, eliminating the interviewee's ability to hide behind barriers that provide a feeling of security and emotional or psychological support.
- e. Choose the room furnishings and the position of the furniture based on the type of interviewee (friendly, hostile). For friendly witnesses, the room should be casual and comfortable. For hostile witnesses, the room should be sparsely furnished with only chairs and pictures.
- f. Control the physical factors that affect the interviewee's mental activity. You decide when to take breaks and whether or not food or drink is allowed during the interview. Offering a cup of coffee at the beginning of an interview sets an informal and friendly tone whereas the absence of coffee may convey a different message.

**Psychological Factors.** You have an influence on psychological factors (e.g., fear, excitement, intimidation) that impact the success of the interview. Be aware of this influence and try to eliminate negative factors and foster positive interview conditions. If you encounter an angry witness, keep your anger in check and make every attempt to suppress the witness's anger. You want to eliminate

psychological factors which may affect the reliability of the information you obtain. When you begin an interview, allay the witness's fears, anger and excitement by telling them:

- a. You are conducting the interview to obtain information pertinent to the matter under investigation.
- b. They are not the target or subject of the inquiry (if applicable).

# 0404.6 Questioning Techniques \*\*\*

Evaluate the interviewee to determine which interviewing techniques to employ. The more familiar you are with the details of the case and the personalities involved, the better you will be able to tailor your interview techniques. Document the types of questions you plan to ask in the Interview Plan. Generally, you use interviewing techniques vice interrogation (typically reserved for criminal cases) when conducting IG investigations. However, if you know in advance that the witness is reluctant or hostile, prepare accordingly.

#### 0404.7 Topic Outline

An outline of topics provides clear-cut goals and objectives for the interview. You do not include the actual questions you intend to ask, only a description of each topic you want to discuss with each interviewee. An outline helps you to:

- a. Avoid reading the questions during the interview
- b. Focus your attention on the answers to ensure they are responsive
- c. Ask appropriate follow-up questions

#### 0404.8 Number of Interviewers \*\*\*

- a. Whenever possible, two investigators should conduct the investigation. Make a note in your Interview Plan whether a second investigator will be present during the interview and the role that investigator will play. If a second investigator is not available, another trustworthy person may be used as a stand-in. When you must travel to conduct interviews, consider using local command IG personnel or command evaluators as stand-ins.
- b. When two investigators conduct an investigation, the lead investigator introduces the interviewers, states the purpose of the interview, provides a reason for cooperation that leads interviewees to believe they will benefit from cooperating, allays their fears that they are under suspicion of wrongdoing (when applicable), does not reveal detailed facts of the case, establishes rapport, asks the first series of questions, sets the tone and the parameter of the interview

c. **The other investigator** takes notes, observes the interviewees' body language, ensures the investigator covers all of the topics in the outline, and may ask follow-up questions. As a general rule, the interviewers do not interrupt each other, but may switch roles as topics change.

# 0404.9 Recording the Interview !!!

Document the method you used to record information using one of these methods:

- a. Note taking
- b. Sworn Statements
- c. Results of Interview
- d. Verbatim (Tape recording)
- e. Videotapes

### 0404.10 Interviewee's Rights and Responsibilities \*\*\*

Be prepared for the interview. Determine in advance the rights and responsibilities of each interviewee. Include this information in the Interview Sequence Plan. If you know in advance you may use rights warnings during an interview, consult with an attorney about the proper procedures.

- a. Interviewees' Right Against Self Incrimination. An interviewee has the right to refuse to answer a question if he/she has committed a crime and believes the answer may be incriminating. An interviewee may not invoke the right simply to avoid giving a statement.
- Responsibilities. DON personnel (military and civilian) must cooperate with IG investigators. If they refuse to answer questions, they could face disciplinary action.
- c. Two types of rights warnings you may give interviewees
  - Article 31(b), UCMJ, warnings for military subjects in custodial and non-custodial settings [Article 31(b) warnings are frequently used in Naval Inspector General cases].
  - 2. Miranda rights for civilian subjects, if you interview them in a custodial setting (Miranda rights are almost never used in Naval Inspector General cases).
- d. Both Article 31(b) and Miranda warn interviewees they have the right to:
  - 1. Retain counsel (or have appointed counsel, if military)

- 2. Remain silent
- 3. Consult with counsel before an interview
- 4. Refuse to answer questions if the answers may be used against them.

#### 0404.11 Sensitivity And Privacy Considerations

Once you have completed the Investigative Plan and an Interview Plan for each interviewee, you are ready to begin your investigation. Keep in mind that the mere fact you are conducting an investigation brings the subject's reputation into question, even if you do not substantiate the allegation(s). Protect the privacy of subjects, to the extent possible, using one or all of these techniques:

- a. Make your inquiries in a discreet manner.
- Gather documents from the complainant or subject before going to others if the records will prove/disprove the allegation without conducting additional interviews.
- Gather documents pertaining to various command personnel instead of focusing entirely on the subject to make it appear you are randomly checking records.
- d. Explain to the interviewee(s) the importance of not discussing the case with anyone but you (the investigator) as these actions may constitute a violation of someone's Privacy Act rights or obstruction of justice.

#### 0404.12 Interview Phase – Introduction 494

The Introduction Phase sets the tone of the interview. Follow these procedures when initiating an interview:

- a. Introduce yourself and identify the office you represent.
- b. Produce your credentials or a tasking/appointing letter to the interviewee to establish your authority to conduct the interview.
- c. Ask the interviewee for his/her name, command, and phone number to confirm he/she is the right person and to obtain or verify contact information.
- d. Explain the purpose of the interview to allay the interviewee's fears and apprehension.

- e. Provide an overview of what to expect during the interview, but do not divulge unnecessary details of the investigation.
- f. Explain and execute a Privacy Act statement.
- g. Administrative Oaths.- Place the interviewee under oath.

**NOTE:** Do not have to place SME's under oath.

#### 0404.13 Interview Phase - Building Rapport \*\*\*

Build rapport with the interviewees, before you ask the first question. Rapport may be nothing more than a handshake, smile, professional demeanor, or the way you explain the purpose of the interview. Establish a sincere and trusting relationship from the beginning and a method of non-verbal communication to enlist their full support and cooperation. Build and maintain rapport throughout the interview. Each investigator develops a style unique to him/her, but generally relies on the methods listed below to build rapport:

- a. Greet the interviewee with a firm, friendly handshake.
- b. Set the tone with your voice inflection, gestures, and facial expressions
- c. Treat everyone with dignity and respect.
- d. Use neutral terms and non-threatening mannerisms and body language.
- e. Express empathy or sympathy, when appropriate.
- f. Avoid making editorial comments.

#### 0404.14 Interview Phase - Questioning 494

Communication, both verbal (language, speech, words) and non-verbal (conduct, expression, attitude), is the key to a successful interview. The ability to question effectively is central to eliciting verbal responses from interviewees. Good questioning is a four step process that involves:

#### **Questioning - Ask a question**

Use three types of questions when interviewing a witness. These are free narrative (open-ended), direct examination or direct questions, and cross-examination questions.

#### Questioning - Free narrative (or open-ended) questions

Elicit an open-ended, response using free narrative questions. You may also use this type of question to obtain a general summary of the interviewee's knowledge

of events. Generally, you will want to start the interview with open-ended questions. Ask the interviewee to talk about what he/she knows regarding the particular incident or matter (e.g., "Tell me what you know about Ms. Johnson missing work." Ask the interviewee to "tell the whole story" rather than an edited version of the events. Also, have the interviewee describe what he/she feels is important rather than what he/she thinks you want to hear.

# **Questioning - Direct examination or direct questions**

Elicit specific detailed information using direct examination or direct questions. Direct questions usually follow free narrative questions. They are straightforward and frank and commonly used to fill the gaps in an interviewee's story. Use this type of question to ask for specific information and elicit specific facts.

- a) Ask questions that will not elicit hostility.
- b) Ask questions in a manner to develop the facts in a systematic order.
- c) Ask one question at a time.
- d) Ask straight forward and frank questions.
- e) Give interviewees ample time to answer.
- f) Help interviewees remember without suggesting the answer.
- g) Repeat or rephrase questions several times, as required, to get the desired facts.
- h) Give interviewees the opportunity to clarify answer.
- i) Separate facts from inferences.
- j) Get all the facts.
- k) Ask questions about every topic discussed.
- I) Ask interviewees to summarize.

**Examples:** How many people did you see sitting at the table with Ms? Chase? Who remained at the restaurant after you left?

#### **Questioning - Cross-examination (leading) questions.**

Cross-examination (leading) questions are used to test the accuracy, completeness, and veracity of an interviewee's responses to previous questions and are usually associated with hostile witnesses in a courtroom. When using cross-examination questions, be friendly but reserved and unemotional. Point out inconsistencies and ask the interviewee to explain inconsistencies. Ask the interviewee to repeat testimony about a particular event several times or ask about the event in a different manner. For example, ask:

What happened?

Why it happened?

When it happened?

Who was there?

Why they were there?

How the subject happened to be there?

What preceded or followed the event?

- a) Consider summarizing the known facts and comparing them with the interviewee's statements. During questioning, pay particular attention to body language especially when confronting interviewees with contradictions and inconsistencies.
- b) Use leading questions to test whether interviewees will change their testimony under pressure. Phrase these questions to elicit the answer you expect - usually "yes" or "no."
- Leading questions may also help to identify weaknesses in the interviewee's responses such as interviewees who say what they think you want to hear.

**Example**: Isn't it true there were two people sitting with Ms. Chase?

# 0404.14 Interview Phase - Receive the Answer

- a) Listen carefully.
- b) Keep an open mind.
- c) Paraphrase responses to show the interviewee you are listening before moving on to another question.
- d) Concentrate on what the interviewee is saying.
- e) Maintain control, but do not dominate the discussion, at all times.
- f) Summarize the key points.
- g) Let each person tell his/her story with minimal interruptions.
- h) Use silence to force a response.
- i) Keep your talking to a minimum
- j) Encourage responses by using gestures and eye contact.
- k) React to disclosures appropriately.

#### 0404.16 Interview Phase - Evaluate the Answer

Use each type of question to evaluate the interviewee's answer

a) Free narrative (or open-ended). Evaluate the interviewee's overall story of the events of the incident. After reviewing your notes and the interviewee's answers, prepare direct examination questions to elicit more detailed information about the incident.

- b) Direct examination or direct questions. Evaluate the interviewee's responses to direct questions. Compare the information to that which you have collected previously from documents and other interviewees. Based on the results of the comparison, evaluate the veracity of the interviewee's answers. Prepare cross examination questions, if necessary, and re-interview the witness if there are inconsistencies in the testimony.
- c) Cross-examination questions. Use cross-examination questions to evaluate the interviewee's perception and judgment, test previous testimony for accuracy, resolve conflicting information, evaluate vague or inconsistent answers, fill in evaded details, and to undermine the confidence of interviewees who lie.

#### 0404.17 Interview Phase - Record the Answer

Documenting the interview. Use one of these methods to document an interview: Note taking, sworn statement, declaration, results of interview, verbatim interview, or video-teleconference interview.

- a. **Note taking**. Accurate note taking is critical to the success of an interview. Take notes even when taping an interview in the event an interviewee challenges the accuracy of the interview. Keep the following in mind when taking notes:
- (1) Always indicate the method of interview (in person, by phone, tape recording), purpose, place, date and time, and attendees and their phone numbers.
- (2) Ensure your notes are factual, objective, concise, clear, and complete. Avoid including doodles or editorial comments.
- (3) Include both your questions and the interviewee's answers in a taperecorded interview.
- (4) Write down all statements an interviewee makes that are material to the case. Your notes serve an important function as a memory resource to create witness statements. They also serve an important function when the interviewer and interviewee disagree as to what was said during the interview. Under these circumstances, notes may be used to impeach the interviewer or the interviewee.
  - (5) When in doubt, write it down!
  - (6) Review your notes several times during the course of the interview.
- (7) Retain your notes and tapes until final disposition of the case to include judicial proceedings. (Especially important when criminal prosecution is involved,

as the rules of procedure and evidence relating to criminal trials and court martials require, pursuant to the Jencks Act (18 U.S.C. 3400), the production of investigator notes.

- (8) Use quotation marks when you record an interviewee's quote in your notes. Ask the interviewee to initial the quote when you conclude the interview.
- b. **Sworn Statement.** SECNAVINST 4430.47G authorizes DoD personnel to administer oaths pursuant to 4 U.S.C. 303(b) to obtain sworn testimony. Before you interview, administer the oath: "Do you swear or affirm that the information you will give is true and correct to the best of your knowledge and belief?" Write the statement yourself and ask the interviewee to review, annotate and approve any changes, and initial or sign each page before finalizing the document. You and the interviewee must sign the Sworn Statement. You may use the sworn statement at any time, but specifically under these circumstances:
  - (1) The witness is cooperative and the information is critical to proving or disproving the allegation;
  - (2) The interviewee is cooperative but you believe he/she may later change his/her testimony;
  - (3) The interviewee provides information pertaining to serious misconduct, which may lead to disciplinary action.

At the conclusion of the interview before the interviewee signs his/her Sworn Statement, administer this oath: "Do you swear or affirm that the information you have provided is true and complete?"

c. **Declaration**. If the interviewee provides you a statement over the telephone, document the pertinent information, send it to the interviewee as an attachment to an e-mail, by regular mail, or by facsimile and ask him/her to approve the content, sign it, and return it to you using one of the same methods. Only the interviewee signs a Declaration under 28 U.S.C § 1746.

**NOTE:** The Sworn Statement and the Declaration carry the same weight when considered as evidence.

d. **Verbatim Interview (taped and/or transcribed)**. Use verbatim interview (tape and/or transcript) whenever possible, as it is the most reliable and accurate method of preserving testimony, keeping in mind it is more costly than other methods. Verbatim interviews are made using voice or videotape recordings and then transcribed word for word. Verbatim interviews are most effective and helpful when:

- (1) The subject areas are very broad, complex, or technically oriented.
- (2) The allegation is serious in nature.
- (3) You anticipate the witness will be uncooperative.
- (4) The information is critical to the case.
- e. **Results of Interview (Record of Interview)**. Use the Results of Interview to document minor, factual information. The Results of Interview may be a narrative written by the investigator or written interview questions followed by interviewee's written responses. Follow these guidelines when preparing a Results of Interview:
  - (1) Summarize your notes (or the tape recording) in a typed statement.
- (2) Help the interviewee express him/herself accurately and effectively. However, the summarized statement must reflect the interviewee's thoughts and beliefs, not yours.
- (3) Ask the interviewee to read and comment on draft Results of Interview, particularly in more complex technical cases.
- (4) Obtain the interviewee's signature on the draft Results of Interview or statements if you believe he/she may later change his/her testimony.
- f. **Video Teleconference Interviews**. Use video teleconference interviews if you are unable to conduct the interview in person and you want to be able to see the interviewee instead of using the telephone.
- (1) Video Teleconference (VTC) equipment is now available at some commands and is being used to conduct interviews. Conducting an interview by video teleconference is not as desirable as an in-person interview; however, it is much better than a telephone interview.
- (2) Video Teleconference interviews can also reduce the expenses related to travel and time away from the office.
- (3) Use the same methods discussed above for in-person interviews when conducting a video-teleconference interview.

**Taping procedures**. The following general procedures should be used during the conduct of a tape recorded interview:

a. **Tape/Digital Recorder**. Before beginning the interview, the IG investigator should run a test of the recorder to ensure that it is in good working condition. During the interview, set the volume of the recorder in the medium range and place it in close proximity of the witness. Place the recorder as inconspicuously as possible, but do not hide the equipment from the interviewee. The witness will often feel more comfortable and talk more freely if the tape recorder is to the side. Doing so encourages the witness to speak directly to the investigator, rather than speaking to the recorder. Ask the witness to speak loudly and clearly. If the witness makes a nonverbal gesture such as head nods or hand movements, direct the witness to provide an audible response.

b. **Preliminary information**. Do not ask the witness for permission to record the interview. Explain that it is DON IG policy to conduct interviews in this matter. Begin the recorded interview by introducing all parties present, noting the date, time, place of the interview. When administering the oath, ask the witness to raise his or her right hand and then recite the oath:

# "Do you swear that the testimony you are about to give in this inquiry will be the truth, the whole truth and nothing but the truth, so help you God?"

If the witness refuses to swear the oath, substitute the word "affirm" for "swear." If the witness refuses to swear or affirm to his or her testimony, note the refusal on the tape and proceed. The next step is to ask the witness to declare his or her full name, rank or position, and current duty assignment. Also, if the witness was informed that a copy of the transcribed tape of the interview would be provided, confirm this for the record at this time.

- c. **Make a Good Record**. Explain any acronyms by the witness and spell out any questionable words or names. Explain verbally any documents that are introduced during the interview and refer to them by name and date, page and paragraph number. If necessary, mark or number the document (e.g. "Document #1"), and have the witness refer to the document identifier while testifying about the document. Again, ensure all witness responses are audible.
- desire to make statements "off-tape/unrecorded" during the course of an otherwise tape-recorded interview. This is permissible, especially if the interview is planning to divulge classified information. The witness should be cautioned that eliminating portions of the interview from taping does not constitute going "off the record." In these cases, the investigator will state on the tape that he or she is turning off the tape/digital recorder and provide the time of day when the recorded testimony is resumed. It must be emphasized that the tape/digital file represents the best record of the witness' testimony. If the witness asks to go off tape and, while off tape, presents relevant information, the investigator should insert those statements onto the tape/digital file when resuming recorded testimony. This may be done by posing specific questions to the witness while on tape to elicit relevant information, or by summarizing off-tape comments when resuming the recorded testimony and then asking the witness to verify them.
- 1. If unrecorded comments are not suitable for taping (e.g., highly classified information), the testimony should be summarized in a written statement signed by the witness.
- Classified comments may be recorded. However, discussion of classified information should take place in a secure location and the tape/digital record must be safeguarded in accordance with established security regulations.

- 3. It may be necessary to stop the recording during the interview for breaks, or to change tapes. Explain the break for the record when recording resumes. If a second tape is required, repeat the witness's name and the time at the beginning of the tape. At the conclusion of the interview, state the time of termination.
- e. **Transcription**. At the conclusion of the interview, mark each tape/digital file with the witness's name, the date, and case number. Make a determination whether or not the interview needs to be transcribed or can be summarized, in a memorandum for record. To assist the transcribers, provide them with unfamiliar names, acronyms, words, etc. Send a copy of the transcribed interview to the witness for editing if deemed appropriate. Upon the receipt of the edited copy from the witness, mark the edited copy "Record Copy" and maintain both the original of the transcript and the Record Copy for the case file.

**Surreptitious taping.** IG investigators <u>will not</u> secretly record conversations or telephone calls. Violations of this policy may form the basis for appropriate disciplinary or administrative action. Surreptitious tape recording of telephone conversations may constitute a violation of the Federal Wiretap Act.

**Recording third party telephone conversations.** IG investigators will not record telephone conversations in which the investigator is not one of the callers. Such "wiretapping" is illegal without authorization from a judge. If a need for such surveillance is determined necessary, the matter in question is out of the scope of the IG investigator.

Challenges to taping procedures. The taping of the interview may cause witnesses to be uncomfortable. When challenges are raised, explain that it is IG policy to conduct sworn-taped interviews for administrative investigations and that it is the normal practice or procedure. Tell the witness that tape recording the interview is in the best interests of all concerned because it eliminates any possibility of investigator error. If the witness continues to challenge the procedure, the IG investigator should inform the witness that the interview may be canceled if the witness refuses to cooperate and that officials in their chain of command would be notified.

**NOTE:** Do not permit interviewees to use tape recorders during an interview, nor provide them a copy of their statement until the tasking authority closes the investigation.

**0404.18** Interview Phase - Summarization. During this phase, the investigator summarizes the salient parts of the interview to ensure continuity and accuracy. Review your notes with the interviewee to clarify or add

information. Use this opportunity to prompt further recall, ask additional questions, verify critical information, and to allow the other investigator an opportunity to comment or ask questions. This phase is even more important in the one-interviewer interview. Ensure you have recorded all important information accurately, especially when you are the sole interviewer. In the two-person interview, the second investigator usually summarizes from his/her notes and may ask questions.

# 404.19 <u>Interview Phase - Closing</u>.

At the conclusion of the interview:

- 1) Provide the interviewee an opportunity to discuss information not covered during the interview.
- 2) Reassure the interviewee about any concerns raised during the interview;
- 3) Ask the complainant (not the witnesses or subject) if there is anything more to present or discuss. You may want to ask:

Is there anything else I should be aware of?

Is there anything else the Inspector General would be interested in?

Is there anyone else that you feel I should talk to?

Do you know of any other information or evidence I should know of or look at?

- 4) Ask the interviewee how you may contact him/her in the event you need additional information.
- 5) Thank the interviewee for cooperating and remind him/her not to discuss the case with anyone.
- 6) At the conclusion of the interview, ask the complainant (not the witness or subject) what results he/she expects from the investigation.
- 7) Ask the complainant, witnesses, and subject if there is anyone else you should interview, and why.
- 8) Thank the complainant, witnesses, and subject for cooperating.
- 9) Advise the interviewee regarding whistleblower protection.
- 10) Give the interviewee your name, phone number and address so

he/she can contact you to add information.

11) Explain to the interviewee that participants in an IG investigation have no inherent right to know the outcome of an investigation nor to obtain a copy of the IR. Advise the interviewee that once the investigation has been completed and accepted by the tasking authority, a copy of the Investigative Report (IR) may be requested under the Freedom of Information Act (FOIA). (See Chapter 7.)

# 0404.20 Questioning Techniques 498-

Follow these suggested questioning techniques during interviews:

- 1. Ask one question at a time. Allow time for the witness to completely answer each question before moving to the next.
- 2. Use Who, What, When, Where, Why, and How questions. Frame your questions using who, what, when, where, why, and how to develop or explain the facts, to obtain specifics about the incident, and to clarify the issues.
- 3. Ask questions in a conversational manner. Avoid using a demeaning or condescending tone to ask questions.
- 4. Use terms that are familiar to the interviewee and avoid using acronyms.
- 5. Keep the guestions simple and direct.
- 6. Use active listening techniques.
- 7. Observe the interviewee's body language.

#### 0404.21 Sequence of Questions

- 1. Sequence the questions from general to more specific.
  - a) General questions elicit a narrative response and encourage the interviewee to talk allowing the interviewer to get the "big picture." Refrain from interrupting the interviewee during a narrative response.
  - b) A specific question elicits a specific, precise answer. Use specific questions to extract more detailed information or to clarify information after receiving the answer to a general question.
  - c) Refrain from using questions that elicit "yes" or "no" until you have asked a number of general and specific questions. These are often leading questions and should not be used when seeking new information.

- d) Examples of questions sequenced from more general to specific are:
  - 1) Tell me about ....
  - 2) Describe the events...
  - 3) When did you...
  - 4) Who was there...
  - 5) Where was the...
  - 6) What time did...
  - 7) Why were you...

# 0404.22 Transition Questions \*\*\*

Use transition questions to connect thoughts. Start with known information and work toward areas of undisclosed information. Use information you gathered to frame the next question as a logical continuation of those facts. Use leading questions to make transitions from one topic to another.

# 0404.23 Telephone Interviews W.

- 1. In some instances, an in-person interview may not be possible or practical (e.g., if the witness is stationed overseas). Telephone interviews have inherent limitations the most obvious is that you cannot see the interviewee. Obtaining information over the telephone is not the optimal method of interviewing, but it is sometimes necessary. Limit telephone interviews to witnesses who only provide background information, as a follow-up technique after a primary interview has been conducted in-person, and to use a preliminary inquiry technique to determine the extent of someone's knowledge or to develop leads.
- 2. Consider the following when conducting a telephone interview:
  - a. Get call back numbers very early in the event the interviewee is disconnected or hangs up.
  - b. Note the time-zone difference before contacting the interviewee.
  - c. Ask a second investigator to listen and take notes.
  - d. Establish rapport with the interviewee, although it may be difficult on the telephone.
  - e. Never hurry and summarize frequently.

- f. Avoid putting pressure on the interviewee, as she/he may become hostile and hang up.
- g. Make an appointment to finish the interview at another time in the event you are unable to complete the interview.
- h. Take notes more carefully.
- Use VTC conferencing, if available, in order to obtain more nonverbal communications.
- Summarize the interview when you are finished and use a Declaration or a Results of Interview to document the interview.
- 3. Limitations of a telephone interview:
  - a. You cannot interpret the interviewee's facial and non-verbal expressions during a phone interview.
  - b. You can never be sure with whom you are speaking.

# 0404.24 Telephone Questioning Techniques (\*\*\*)

The telephone interviewer uses many of the same techniques as when conducting a face-to-face interview with a few additions and a slightly different emphasis on others.

- 1. Avoid using as many open-ended questions since you cannot observe non-verbal responses.
- 2. Use probing questions to get the interviewee to focus on certain topics and to ascertain underlying reasons for previous comments.
- 3. Use direct questions to narrow the range of answers and to gather specific information. For example, "I was wondering...." or "Would you happen to know...?" Avoid asking open-ended questions that allow for a long narrative response as you may encounter interruptions that may destroy continuity.
- 4. Use leading questions to focus the interviewee when he/she is vague or speaking in generalities.
- 5. Use question softening techniques such as "I am curious..." or "I was wondering..." or "Would you happened to know...?"

#### 0404.24 Ending the Telephone Interview \*\*\*

1. Don't be in a hurry to end the telephone interview. You may obtain additional information during small talk or casual conversation.

- 2. Review investigative notes with the interviewee carefully to ensure agreement about what was said.
- 3. Make an appointment to talk again if you are unable to obtain all of the information you need.
- 4. Ask interviewees to provide documents to corroborate or supplement information.
- 5. Avoid putting pressure on telephone interviewees as they may become hostile and hang up.

### 0404.26 Interview Guidelines \*\*\*

- 1. Greet the interviewee in an appropriate manner.
- Establish rapport.
- Define or state the purpose of the interview
- 4. Maintain control; don't let the interviewee interview you.
- Ask one question at a time.
- 6. Evaluate each piece of information or allegation on its own merit.
- 7. Maintain strict impartiality and keep an open mind.
- 8. Keep your talking to a minimum.
- 9. Keep the interviewee at ease.
- 10. React to disclosures appropriately.
- 11. Be non-judgmental.
- 12. Limit barriers between you and the interviewee
- 13. Don't let the interviewee interview you.
- 14. Avoid arguing with the interviewee.
- 15. Listen before taking action.
- 16. Take your time. Don't hurry.
- 17. Be a good listener.
- 18. Accept the interviewee's feelings.
- 19. Use appropriate questioning techniques, as described in this chapter.
- 20. Use silence, when appropriate to force a response.
- 21. Make no promises.
- 22. Ask questions that develop or explain facts, such as questions that begin

- with Who, What, When, Where, Why, and How. Ask questions in a conversational manner.
- 23. Use transitions to connect thoughts, starting with known information and working toward areas of undisclosed information. Use leading questions as a technique for making transitions from one topic to another.
- 24. Use terms that are familiar to the interviewee and avoid using acronyms.
- 25. Ask a general opening question.
- 26. Match the interviewee's verbal pace.
- 27. Ask questions in a logical progression based on the sequence of events.
- 28. Follow open-ended questions with specific questions
- 29. Ask what the complainant/interviewee expects or wants to happen as a result of the information he/she provides.
- 30. Ask exactly what the interviewee means when they use slang to ensure your interpretation is correct.
- Take breaks often.
- 32. Don't argue.
- 33. Ask if there is any other issue or information the IG should know or anything else the interviewee would like to add.
- 34. Set up a time for continuation, if necessary.
- 35. Extend your appreciation.
- 36. Tell interviewees the information will be used "For Official Use Only".
- 37. Explain the Freedom of Information Act (FOIA) and the Privacy Act

# 0404.27 Common Interview Errors \*\*\*

- 1. When conducting interviews, avoid:
  - a. Revealing personal prejudices destroys your objectivity and credibility
  - b. Hurrying encourages mistakes and omissions
  - c. Making assumptions/jumping to conclusions you may fail to obtain important information and allow false or unverifiable information to be introduced into the investigation
  - d. Making promises you can't keep destroys your credibility and

#### reputation

- e. Degrading the interviewee or talking down to him/her encourages unnecessary emotional barriers and antagonizes the interviewee
- f. Placing too much attention on minor or irrelevant issues impedes the progress of the interview
- g. Bluffing destroys the interviewer's credibility and may allow the interviewee to take charge of the interview
- h. Becoming angry may result in the interviewee gaining control of the interview, serves as a relief to the interviewee, and distracts from the information gathering process
- i. Talking down to the interviewee antagonizes interviewers and invites them to trip up the investigator
- j. Using negatively phrased questions suggests to the interviewee that "no" is the right answer, i.e., "You wouldn't do that would you?"
- k. Using compound or complex questions questions asked in rapid succession before the interviewee can respond to the first question can cause confusion and cause information to be missed or overlooked

#### 0404.28 Common Interview Problems (\*\*\*)

- 1. Admonition of silence
- 2. Dissemination of results of interview
- 3. Presence of attorney and/or union representative
- 4. Use of recorders
- 5. Interviewee demand for information
- 6. Emotional outbursts
- 7. Interruptions

#### 0405 Resolve Common Investigative Problems 4994

Common problems you may encounter during the investigation include:

- 1. Uncooperative commands
- 2. Refusal to comply
- 3. Intimidation
- 4. Requests for other attendees at an interview
- 5. Losing impartiality
- 6. Reprisal
- 7. Requests for advice from interviewees

# 0405.1 Uncooperative Commands 494

On rare occasions, a command may refuse to allow you to interview witnesses or try in other ways to impede the investigation. If you encounter this situation, contact the senior member of the command. If you are unable to resolve the problem at the command level, contact your immediate tasking authority for assistance.

The command should take steps to establish the proper atmosphere for the conduct of an investigation, to include:

- Provide a space for you to work and make witnesses readily available;
- Make a general announcement that an IG investigation is underway to limit speculation;
- Remind employees of their duty to cooperate with you; and,
- Direct uncooperative interviewees to answer your questions and discipline those who refuse to cooperate unless they have the right to remain silent.

**NOTE:** SECNAVINST 4430.47G is the authority requiring cooperation from Navy personnel during an investigation.

# 0405.2 Refusal to Comply 1994

SECNAV policy requires that military personnel and civilian Federal employees answer all questions relating to an investigation. The exception to this rule is self-incrimination.

If DON personnel refuse to be interviewed or will not answer questions during an interview, request the interviewee's superior officer or supervisor to issue written instructions requiring him/her to cooperate. You may want to address this issue before the interview, if you anticipate resistance.

**NOTE:** Civilians who are not Federal employees have no legal obligation to answer questions or to be interviewed during an investigation.

# 0405.3 Witness Intimidation 🚧

You should immediately report suspected tampering or intimidation of interviewees to the witnesses' commander and to your own chain of command. If you suspect the commander has intimidated or interfered with interviewees, advise your tasking authority. Document all incidents of suspected tampering in the case file.

#### 0405.4 Request for Other Attendees at an Interview

Normally, it is not appropriate to allow an interviewee to have friends or relatives present during an interview. Discourage interviewees from inviting friends or relatives to take part in the interview as their presence may be distracting and inhibit candor and full disclosure.

Make exceptions to this rule only if the third party's presence facilitates communications, e.g., a translator.

**NOTE:** Note the presence of all third parties in your investigative file.

#### 0405.5 Losing Impartiality

Investigators must avoid the appearance of partiality. Engaging in social activities with persons involved in the investigation is inappropriate. If you discover an interviewee is a friend, relative, or long-time colleague, or you cannot remain impartial during the investigation, contact your immediate tasking authority.

#### 0405.6 Reprisal | | |

The right of a complainant or witness to communicate with an IG free from fear of reprisal is essential to the success of the IG mission. Reprisal, or the threat of reprisal, constitutes interference with an official investigation. If an interviewee tells you he/she has been subjected to or fears reprisal as a result of participation in the investigation, explain the rights available to him/her under the Whistleblower Protection Acts (civilian or military) and notify the command IG.

#### 0405.7 Interviewee's Request for Advice \*\*\*

Give advice to interviewees only if it pertains to procedural issues or their rights or duties in connection with the investigation.

For example, you may tell an interviewee that he/she may seek the advice of an attorney prior to the interview. However, if asked, do not comment on whether it is appropriate to seek legal advice.

# 0406 Notify Management Upon Completion \*\*\*

Notify senior management that you have completed the investigation.

# **Sample Command Out-Briefing**

We have concluded this portion of our inquiry. We anticipate we will complete our report within 2-3 weeks.

We would like to remind you of the importance of not discussing the case because rumors can damage a person's reputation.

We want to thank you for your assistance during our visit.

#### 0407Summary

- The standard of proof for IG investigations is the preponderance of the credible evidence, which is 51% or greater.
- If the evidence does not tip the scales one way or the other, you should continue the investigation.
- Remember that military personnel and Federal employees are required to answer questions, unless it exposes them to criminal liability.
- Always remain impartial.
- Planning is the key to successful interviewing
- Follow the five phases of interviewing:
  - 1. Introduction
  - 2. Establishing Rapport
  - 3. Questioning
  - 4. Summarization
  - 5. Closing
- Place interviewees under oath before conducting an interviewee.
- Ask questions that elicit general responses and then get increasingly specific as the need for details becomes greater.
- Ask interviewees who provide important information to sign Sworn Statements or Declarations under 28 U.S.C. 1746.

# **Chapter 5**

# Phase 3: Conduct the Investigation Legal Implications

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#### 0501 Referral of Complaints Involving Criminal Misconduct to NCIS

Generally, IG investigations concern non-criminal misconduct since the IG is not tasked with investigating criminal matters. However, situations may arise in which criminal wrongdoing is revealed in the course of an investigation. If this occurs, you must follow proper procedures to preserve the option of criminal prosecution.

#### 0501.1 Screening Complaints for Misconduct

SECNAVINST 5520.3 assigns primary responsibility to the Naval Criminal Investigative Service (NCIS) for investigation of criminal offenses. If during the Preliminary Inquiry you discover the complaint involves clear or potential criminal misconduct, refer the case to NCIS. Refer the case whether or not the misconduct occurred on or off a military installation or ship and regardless of whether the matter is under investigation by state, local or other authorities.

NCIS may investigate the complaint or refer it to the United States Attorneys' Office or the appropriate convening authority for possible criminal prosecution. The IG organization maintains an open case file until NCIS has concluded its investigation. NCIS may also decline to investigate and return the case to the IG organization for action deemed appropriate. It is advisable at this point to consult legal counsel regarding the best way to proceed with the investigation.

# 0501.2 Misconduct Discovered During the Investigation

If during the course of your investigation you discover additional allegations that appear to involve criminal misconduct:

- Consult legal counsel for procedural advice before including them in the investigation.
- Refer them to NCIS.

**NOTE:** To preserve the option of criminal prosecution, consult your Staff Judge Advocate for advice on handling cases when there is any possibility of criminal wrongdoing.

#### 0502 Right Against Self-Incrimination

Interviewees, whether subjects, suspects, or witnesses, have a right against self-incrimination that flows from Federal statute. To preserve the Government's right to use information obtained during an IG investigation interview for prosecutorial purposes, provide rights warnings to interviewees, when appropriate.

#### Subjects

Personnel alleged to have committed misconduct.

#### Suspects

Personnel against whom sufficient evidence exists to create reasonable belief that they engaged in **criminal** misconduct.

The two types of rights warnings are:

- Article 31(b), UCMJ, warnings for military subjects in custodial and noncustodial settings; and
- Miranda rights for **civilian subjects**, if you interview them in a **custodial** setting.

#### **Custodial Setting**

A setting in which the interviewee has reason to believe his/her freedom or action has been deprived in any significant way.

Article 31(b) and Miranda warn interviewees that they have the right to:

- Retain counsel (or have appointed counsel, if military).
- Remain silent;
- Consult with counsel before an interview; and,
- Refuse to answer questions if the answers may be used against them.

#### 0503 Rights Forms

The form you will use to give rights warnings to military suspects is the Military Suspect's Acknowledgement and Waiver of Rights, OPNAV 5527/3. The form you use to give rights warnings to civilian suspects is the Civilian Suspect's Acknowledgement and Waiver of Rights, OPNAVINST 5527/5. You can obtain copies of these forms at <a href="http://forms.daps.dla.mil/order/">http://forms.daps.dla.mil/order/</a>.

**Sample** Rights warnings at page 5-15 through 5-17.

# 0504 Right to Counsel at Interview

Some interviewees have a right to counsel during an interview and others do not.

- Military suspect **yes**
- Civilian suspect during custodial interview yes
- Civilian suspect during all other interviews no
- Complainant and other witnesses No, BUT...
  - Investigators should consider advantages and disadvantages.
  - If allowed, role of counsel may be circumscribed.

#### 0505 Special Situations

#### 0505.1 Right to Union Representation at Interview

Civilian employees subject to union contract have the right to have union representation present during an interview.

<u>Exclusive Representative (Union)</u> – Civilian employees under a collective bargaining unit.

<u>Formal Discussion</u> – 5 U.S.C. 7115(a)(2)(A) Right of Union, not employee

Examination -5 U.S.C. 7115(a)(2)(B)

- Weingarten Rights Right of employee, not the union
- Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and to make a request.

#### 0505.2 <u>Interviewee Refuses to Sign Acknowledgement Waiver Form</u>

If the interviewee orally waives his/her rights but refuses to sign the waiver form, you may proceed with the questioning. Make notations on the waiver form to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver form.

#### 0505.3 Waiver Form Cannot be Completed Immediately

In all cases, you must complete the acknowledgement waiver form as soon as possible, preferably, before you begin questioning an interviewee. If you cannot complete the waiver form, you may temporarily postpone its completion, but keep notes.

#### 0505.4 **Prior Incriminating Statements**

If the interviewee was questioned either without being advised of his/her rights or some question exists as to the propriety of the first statement, you must advise him/her of his/her rights. Contact Counsel or the Staff Judge Advocate for assistance in drafting the proper rights advice.

# 0505.5 <u>Interviewee Displays Indecision on Exercising His/Her Rights</u> <u>During the Interrogation Process</u>

If during the interview, the interviewee displays indecision about requesting legal advice (for example, "Maybe I should get a lawyer."), you must discontinue further questioning immediately and consult legal counsel for advice as to how to proceed.

# 0505.6 Right of Contractors and Non- DoD Civilian Employees

An investigating officer has no authority to compel cooperation from a DoD contractor or a non-DoD civilian employee and has no authority to compel nondisclosure. However, these employees may be subject to state law invasion of privacy rules. If they do make a statement, it is a crime for them to lie, in accordance with 18 U.S.C. 1001.

#### 0505.7 Right to Remain Silent

Even in the absence of rights warnings, an interviewee may assert his/her right to refuse to answer a question. This often occurs because the interviewee has engaged in criminal misconduct not known to you.

The right against self-incrimination applies whenever the answer to your question might incriminate the interviewee. You should attempt to determine if the interviewee has a reasonable basis to assert the right. In the absence of the right, the interviewee has an obligation to cooperate with investigators and may not invoke the right simply to avoid answering a question.

**NOTE:** Preparation is the key to knowing what steps to take in the event an interviewee voluntarily discloses evidence of criminal misconduct.

#### 0505.8 Cleansing Warnings

If an individual made a statement and should have been warned but was not, you may re-interview the individual giving him/her rights along with a cleansing warning.

#### Cleansing Warning

"I advise you that any prior illegally obtained admissions or other improperly obtained evidence which incriminated you cannot be used against you in a trial by court-martial (military members) or court of law (civilian personnel)."

#### 0506 Advisement of 18 U.S.C. 1001

- (a) ..., whoever, in any matter within the jurisdiction of the executive,...branch of the Government of the United States, knowingly and willfully:
  - (1) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) Makes any materially false, fictitious, or fraudulent statement or representative; or,
  - (3) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

Shall be fined under this title or imprisoned not more than 5 years, or both.

# 0507 Remedies for Violation of Rights

#### **Article 31 and Miranda**

- Statements obtained cannot be used against the individual at trial. (Exclusionary Rule)
- Evidence obtained as the result of the statements cannot be used against the individual at trial. (Fruit of the Poisonous Tree)
- Mast for military and administrative discipline for civilians does not equate to "trial".

#### **Union Representative**

- Discussion Unfair Labor Practice
- Examination May not use for discipline action.

#### 0508 Immunity

You may grant immunity to an interviewee in cases where the Government's "need to know" is more important than prosecuting the person. A proper or formal grant of immunity must be:

- In writing; and approved by someone authorized to decide whether or not criminal prosecution is appropriate.

#### 0508.1 Types of Immunity

#### - Testimonial or Use Immunity

- -- Precludes the Government from using interviewees' statements or their fruits in criminal prosecution against them.
- -- The Government may prosecute the interviewee when it has independent sources of information sufficient to support the case.

#### Transactional Immunity

-- The Government agrees not to prosecute a person for the underlying crime or transaction the individual is suspected of having committed. This applies even if the Government has independent sources of information sufficient to support the case.

#### 0508.2 **Grant of Immunity for Military Personnel**

In accordance with Rule for Courts-Martial 705 of the Manual for Courts-Martial, the General Courts-Martial Convening Authority (GCMCA) has sole power to provide grants of either testimonial or transactional immunity from criminal prosecution to military personnel. The first GCMCA in the member's chain of command normally signs the grant of immunity.

Military personnel granted immunity:

- May be ordered to answer questions or face discipline for refusal to obey a lawful order.
- May be prosecuted for perjury or for failure to cooperate after immunity is granted.
- May face administrative separation for underlying offense.
- No longer has the right to have an attorney present.

Once the GCMCA grants a military member transactional immunity, he/she cannot be criminally prosecuted except for:

- Committing perjury;
- Giving a false statement; and,
- Failing to comply with an order to testify in the matter.

If the GCMCA grants a military member testimonial immunity he/she may still be prosecuted for the underlying offense if it can be proven by evidence independent of his/her own statement.

**SAMPLE** Grants of Immunity beginning on page 5-18.

#### 0508.3 Grant of Immunity for Civilian Personnel

The Kalkines Supreme Court case forms the basis for the grant of immunity for civilian employees. U.S. Attorneys have authority to grant immunity to civilian personnel. Contact a U.S. Attorney through the Naval Criminal Investigative Service (NCIS).

#### The interviewee:

- May be directed to answer questions or face discipline for refusal to follow direction of supervisor or for failure to cooperate with the investigation.
- No longer has the right to attorney being present.
- May be prosecuted for perjury.
- May face administrative disciplinary actions for underlying offense based on statement.

#### 0509 Other Rights

These rights and others are addressed in full in the Naval Inspector General Investigations Manual (1995).

# Right to confidentiality?

- For Official Use Only
- Privacy Act
- Freedom of Information Act

# Right to know results of investigation? (Investigations Manual Section 0335)

Except for military members who allege they have been victims of reprisal covered by 10 USC 1035, complainants, witnesses, subjects and suspects have no inherent right to know the outcome of an investigation or to review any final investigative report that may be issued pursuant to an investigation. However, it is Navy policy to apprise complainants of the general results of an investigation.

# Right to comment on adverse information? (Investigations Manual Section 0333)

During the course of the investigation itself, subjects and suspects have no specific right to comment or rebut adverse information about them, or even to be informed of the existence of an investigation. However, considerations of fairness

and prudence often lead the investigator to give them this opportunity. It is not necessary to make all unfavorable allegations or information known to them. Generally, allegations not deemed worthy of investigation should not be revealed. Conversely, allegations that appear to be substantiated should be revealed, and the subject or suspect should be allowed the opportunity to comment on them specifically. They should also be informed of, and permitted to comment upon, any other derogatory information that will be maintained in the investigative file or other official record. Comments may take the form of:

- Oral responses made during the course of an interview;
- Sworn or unsworn written statements;
- Documents or physical evidence; and
- A request that investigators interview others the subject or suspect asserts may have pertinent information the investigator should consider.

In most cases, you should interview subjects or suspects near the end of the investigation, after you have developed all adverse information. In some cases, it may be advisable to interview them at an early stage of the investigation, as when they may be the only source of certain information necessary in the preliminary stages of an investigation. In such cases, the investigator should advise them they may be interviewed more extensively at a later date.

# Interviewees' right to know their interview status? (Subject, witness, or suspect) (Investigations Manual Section 0320)

In the absence of a specific question from the interviewee, investigators are not required to inform interviewees of their interview status (witness, subject, or suspect) except to preserve the government's right to obtain a criminal conviction based on information provided by suspects during the interview (in which case, Miranda or Article 31(b) rights are required, as discussed below). However, investigators may advise interviewees of their status, and usually do so in order to expedite the interview. Investigators should anticipate that people will ask whether they are accused or suspected of any wrongdoing at the outset of the interview. If asked, the investigator should reveal the interviewee's current status.

# Right to ensure investigative accuracy? (Investigations Manual 0335)

There is no inherent reason why interviewees may not be provided copies of investigative notes, interview reports, or their own statements. However, while the investigation is pending, there is some risk the interviewee will make this information available to others as a form of preparation for their interview. Thus, absent compelling reasons, such material should not be provided interviewees until the investigation is concluded.

Fairness dictates that subjects and suspects be afforded the same courtesy. Complainants and witnesses have no greater right to review a copy of the final investigative report than do members of the general public. If they request a copy, they should be advised to file a FOIA request.

Subjects and suspects who will not be subject to adverse action also have no greater right to see the investigative report than the general public and should also be told to file a FOIA or Privacy Act request. However, if the appropriate responsible authority does decide to take action against them, then they will be entitled to obtain the report, and much of the other information maintained in the IG investigative file, during the course of, and under the rules applicable to, such proceedings.

The IG should not provide these materials to subjects or suspects directly in those cases, but should work through the government counsel assigned to handle the matter. After an adverse action has been taken, a subject or suspect filing a Privacy Act request may be deemed to have been denied a right, benefit or privilege as a result of the IG investigation. In that case, the Privacy Act provides for access to all information except that which would identify a confidential source. Consequently, information that would ordinarily be withheld under FOIA, such as names of witnesses, may be subject to release pursuant to a Privacy Act request.

For the same reason, interviewees should not be permitted to make their own recording of an interview. If making a tape recording is essential to obtaining the interview (as, for example in the case of a non-federal employee witness who can not be ordered to cooperate), the investigator may be able to convince the interviewee to give the investigator the tape until completion of the investigation.

At the completion of the investigation, it is proper to give interviewees copies of their sworn or unsworn written statements upon request. Investigators should also keep in mind that a properly framed FOIA or Privacy Act request can also lead to the release of the factual portions of an investigator's results of interview reports. In dealing with these issues, the investigator should keep in mind that the objective, ensuring accuracy, is of equal concern to the government as to the interviewee.

#### Right to protection against reprisal? (Investigations Manual Section 0315)

Complainants and witnesses who are concerned about confidentiality usually fear reprisal. The right to communicate with an IG free from fear of reprisal is essential to successful accomplishment of the IG mission. It should be discussed with complainants and witnesses who express concerns about confidentiality. It is very important to discuss this right with subjects and subject commands when they are notified of an IG investigation.

Reprisal, or the threat of reprisal, constitutes interference with an official investigation and is a matter of Secretarial interest. IG investigators who become aware of threats or acts that could constitute reprisal against personnel cooperating in an investigation shall immediately document such information and advise their superiors in the IG chain. The investigators and/or their superiors should then discuss the matter with appropriate officials in the command in which the threats or acts occurred. If the matter is not resolved to the satisfaction of the IG at that point, the investigators shall report the matter to NAVINSGEN via the IG chain of command. In appropriate cases, NAVINSGEN will advise senior Navy officials of the possibility of interference with an IG investigation, investigate the matter, and make recommendations for appropriate action.

## 0510 Subpoena Power

The DoD IG has the authority to issue IG subpoenas pursuant to the Inspector General Act of 1978. Since the Act does not apply to the Service Inspectors General, NAVINSGEN does not have the authority to issue an IG subpoena. In appropriate cases, however, the DoDIG will assist DON IG investigations by issuing subpoenas.

IG subpoenas are used to obtain documents (not testimony) from persons or organizations outside of the government, i.e., the private sector. Subpoenas are not used to obtain documents from DON or DoD personnel or organizations, or from federal agencies outside DoD (such documents should be made available through regular intergovernmental channels).

IG subpoenas may be used to obtain any kind of record that would tend to prove or disprove the allegations being investigated. Examples include notes, memos, books, ledgers, diaries, working papers, invoices, time cards, telephone billing and call records, financial and banking records (subject to certain restrictions), regardless of their form, i.e., hard copy or electronic storage media such as computer disks.

Examples of cases which you may find an IG subpoena useful are: frequent flyer credits abuse (airline records), falsification of employment applications (records from former employers and schools), travel fraud (hotel, car rental, and airlines bills and other records), telephone abuse (telephone company records), conflict of interest cases (records of financial holdings, etc.), and professional competency cases (hospital and other health professional records).

Submit requests for DoD IG to assist in obtaining a subpoena to the Director of the NAVINSGEN Hotline Investigations Division. In most cases, the request should be initiated with a telephone call, so that NAVINSGEN can determine the likelihood DoD IG would issue the subpoena before proceeding with the paperwork. The DON IG organization seeking the subpoena should be prepared to explain the relationship between the documents sought and the allegations under investigation, and to detail the efforts, if any, already made to obtain the documents on a voluntary basis.

## 0511 Authority to Restrict Disclosure

Remind the interviewees of their responsibility to refrain from discussing the interview with anyone else. The investigator should tell the interviewee:

"Do not discuss what we have talked about with anyone else, and if anyone tries to talk to you about this interview, report it to me."

Alert the interviewee to the seriousness of releasing information about the investigation to others based on:

- Obstruction of justice
- Duty to cooperate with the investigator
- Privacy rights of the subject

(Initial the spaces)

## 0512 Article 31(b) Warning (Military acknowledgement/waiver of rights)

Suspect's Rights Acknowledgement/Statement (See Jagman 0170)

FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW	ı	TIME	DATE
		I	
	F	Rights	
		ature and initials set forth from me, he warned me	
(1) I am suspected of	having comm	itted the following offense	e(s):
(2) I have the right to	remain silent;		
(3) Any statement I mocourt-martial;	ake may be u	sed as evidence against ı	me in trial by
lawyer/counsel may be a	a civilian lawye	awyer/counsel prior to any er retained by me at my o counsel without cost to n	wn expense, a
(5) I have the right to military lawyer present d		ained civilian lawyer and/orview.	or appointed

## 0513 Waiver of Rights

l by ny
this
rily sure

Signature (Accused/Suspect)	Time	Date
Signature (Interviewer)	Time	Date
Signature (Witness)	Time	Date

# 0514 Sample Miranda Warning (Civilian Acknowledgement/ waiver of rights)

waiver or rights)	
Place:	
I,	have been advised by
	that I am suspected of
I have also been advised that:	<u> </u>
(1) I have the right to remain silent and r	nake no statement at all;
(2) Any statement I do make can be use judicial or administrative proceeding;	
may be a civilian lawyer retained by	ver prior to any questioning. This lawyer me at no cost to the United States, or, I ppointed to represent me at no cost to
(4) I have the right to have my retained interview; and,	or appointed lawyer present during this
(5) I may terminate this interview at any	time, for any reason.
I understand my rights as related to me understanding, I have decided that I do retained or appointed lawyer, or have a decision freely and voluntarily. No threat	not desire to remain silent, consult with a lawyer present at this time. I make this
Siç	gnature:
Da	ate and Time:
Witnessed:	
	ate and Time:
At this time, Ivoluntary statement. This statement is n as set forth above. It is made with no thr to me.	nade with an understanding of my rights

## 0515 Sample Grant of Use Immunity (Civilian)

	Civilian Employee Admini	istrative Warning
	Place	ce:
I,		have been
advised by		that I
am suspected of		·
I have also been ad	vised that:	
(1) I am goin performance of my	_	of specific questions concerning the
the Navy disciplinar neither my answers	y proceedings may be init nor any information or ev	nestions. Although Department of tiated as a result of my answers, vidence which is gained by reason any criminal proceedings; and,
	ect to removal from federa  and fully to any questions	al service if I refuse to answer or fals.
I understand	the warning as related to	me and set forth above:
Signature:		
Date/Time:		
Witnessed:		
Date/Time:		

## 0515 Sample Grant of Testimonial or use immunity (Military)

	IT OF IMMUNITY E MATTER OF	)	GRANT OF IMMUNITY
		,	GRAINT OF IMMONITY
		)	
			<del></del>
To:	(Witness to whom	immunity is to be gra	anted)
(if cha	rges have been pre		or the Government in the matter of I identification of the accused and
forego testim indired crimin	oing matter, you are ony or other informat otly derived from su- al case, except a pr	hereby granted immation given by you (context) testimony or othe	ess for the Government in the nunity from the use of your or any other information directly or information) against you in any y, giving a false statement, or stify in this matter.
other from s effecti	information given by such testimony or ot	/ you (or other inforn her information) aga	rom the use of your testimony or nation directly or indirectly derived inst you in any criminal case is fy under oath as a witness for the
	Signature		
	Grade, title		

## 0516 Sample Grant of Transactional Immunity (Military)

ORDER TO TESTIFY (See JAGMAN 0129e)	
RANT OF IMMUNITY	
THE MATTER OF)	
)	
)	
o: (Witness to whom immunity is to be granted)	
It appears that you are a material witness for the Government in the matter charges have been preferred, set forth a full identification of the accused are substance of all specifications preferred.	
In consideration of your testimony as a witness for the Government in the regoing matter, you are hereby granted immunity from prosecution for any fense arising out of the matters therein involved which you may be required stify under oath.	to
It is understood that this grant of immunity from prosecution is effective only con the condition that you actually testify as a witness for the Government. It rther understood that this grant of immunity from prosecution extends only to e offense or offenses, which you were implicated in the matter herein set for and concerning which you testify under oath.	is O
Signature	
Grade, title	

# **Chapter 6**

# **Phase 3: Conduct the Investigation**

# **Writing the Report**

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## 0601 Writing the Report Overview

This chapter presents an overview of the characteristics of good report writing and introduces the two formats used for submitting your investigative results. The two formats you may choose from are the: Investigative Report (IR) and Letter Report (LR).

This chapter discusses each section of the reports and includes abbreviated sample documents for each section. The chapter also discusses the problems you may encounter when writing the report and common report writing mistakes.

See samples for a complete investigation to include: Investigative Plan, Command In-Brief and Out-Brief, Interviewee In-Brief and Out-Brief, Privacy Act Statement, sample record of interviews, forwarding letters, Investigative Report (IR) and sample Disposition Letter.

See the Workbook for sample Letter Reports.

## 0602 Purpose of the Report

A good report is the basis for judging the <u>investigation</u> and its conclusions. The purpose of the report is to:

Document whether the allegation(s) were Substantiated or Unsubstantiated. Organize the information so that anyone can read and understand the report without reference to enclosures or other material.

Document the findings in an impartial and accurate manner and provide responsible authority information to assist in making a determination whether to take corrective, remedial, or disciplinary action.

#### 0603 Characteristics of a Good Report

<u>Tells a Story</u>. A well-written report "tells a story." The report should:

- a. Answer these questions about the case: who, what, when, where, why, how, and how much.
- b. State the allegations in the proper format (who did what in violation of which regulation and when).
- c. State the facts clearly, accurately, and completely.
- d. Explain the regulations and apply them to the facts.
- e. Include mitigating circumstances and facts that do not support your conclusions to ensure you tell the "whole" story, not just one side.
- f. Persuade the reader that your conclusions are correct.

**NOTE:** The report is a "stand alone" document and does not include enclosures (except for reports of reprisal). However, you should maintain all of the enclosures with the file and provide copies to responsible officials, if needed to assist in the decision-making process to take disciplinary action.

- 2. **Stands Alone.** A report must "stand alone." The report should:
  - a. List the interviews and documents you reviewed in the report, but not include any enclosures or attachments (Investigative Report only).
  - b. Provide responsible authority the information they need to reach a fair decision, without referring to exhibits or other documents.
  - c. Forward the report to the tasking authority when you complete it. Retain the enclosures with the working papers and provide copies to responsible officials, if needed, to assist in the decision-making process to take disciplinary action. Identify the location of the working papers in the first section of your report.
- 3. **Complete**. A report must be complete. The report should:
  - Address each tasked allegation and all emerging allegations developed during the investigation.
  - b. Explain how you addressed these allegations in the report, for example, if you referred them to another command or process for resolution.
  - c. Discuss all significant evidence, pro and con.
  - d. Thoroughly discuss and analyze the rules and regulations and how they apply to the facts.
  - e. If an allegation is not appropriate for an IG investigation or you believe the complainant should address the issue using another process, contact the tasking authority to discuss how to proceed.
- 4. <u>Clear and Logical</u>. Any reader, even someone who has no knowledge of the case, should understand how you reached your conclusions based solely on the report. When writing the report:
  - a. Use direct, clear, and concise language.
  - b. Present the information in a logical progression, from facts to conclusions, stated in precise and neutral terms.
  - c. Explain your reasoning. You must convince the reader that your conclusions are supported by the facts and analysis in your report.
  - d. Distinguish between facts, assumptions, conclusions, and opinions.
- 5. **Proper Style and Tone**. Most reports convey some degree of bad news to someone. It is not only what you say, but also how you say it that contributes to a "good" report. Use the proper style and tone to explain why you did or did not substantiate an allegation so the reader can more easily accept the conclusions.
  - a. Tone Avoid emotional, judgmental or value-laden words to describe events. Use active voice to let the reader know who performed the action.
  - b. Style Use a simple, direct approach. Concentrate on using the correct format, punctuation, vocabulary, and grammar.

## 0604 Content of the Report

- Generally, you collect a lot of information in interviews and from documents. Before you begin writing the report, review the facts to determine which to include and which to eliminate from your report. Information may be:
  - a. **Redundant** Summarize redundant evidence, e.g., "Five witnesses stated Ms. Jones left work early."
  - b. **Irrelevant** Carefully examine the information to ensure it is relevant to proving whether or not an allegation is substantiated.
  - c. **Relevant, but does not support your conclusion** Your report must include all the relevant evidence—even the evidence that does not support your conclusion. Otherwise, the reader may question the veracity of the report.
  - d. **Conflicting** Address conflicting evidence. The report should be objective and include both sides of the story.

## 0605 Types of Reports

- 1. The two formats for submitting the results of your investigation are the Investigative Report (IR) and the Letter Report (LR).
- 2. The choice of format is based on the strength of the investigative evidence and not the type of investigation you conducted (Preliminary Inquiry or Full Investigation) or the results of your findings (Substantiated or Unsubstantiated).
- 3. Use the IR when your Findings are not readily apparent or clear and you must weigh and discuss the evidence to explain how you arrived at your Conclusion. Use the LR when the evidence is clear and unequivocal and no discussion of the evidence is required to explain how you arrived at your Conclusion.

### 0606 Investigative Report (IR) Format

### 0606.1 General Guidelines.

Use the IR format:

- a. Anytime. The IO may always submit investigative results in the IR format for either a Preliminary Inquiry or Full Investigation if he/she wishes or if doubt exists as to which format is appropriate; and,
- b. Where the findings for at least one allegation in either a Preliminary Inquiry or Full Investigation are unclear and the IO <u>must weigh and discuss the evidence</u> to explain why he/she arrived at a certain conclusion.
- **0606.2** <u>Report Sections</u>. The report has four sections, if you only address one allegation, and more sections depending on how many additional allegations you investigate.

- a. **Section 1:** Administrative Section. Investigator(s) and Identifying Information and Location of Working Papers
  - 1) **Subpart a** List **all** of the investigators, not just the lead investigator. Include the full name, rank/grade, command, position in the command, telephone number, and e-mail address.
  - 2) **Subpart b** Provide the exact location of the working papers. Include the command, office, and address, to include the room number.

# Sample Investigator(s) and Identifying Information and Location of Working Papers

# Investigative Report 22 September 2003

- 1. Investigator(s) and Identifying Information and Location of Working Papers
  - a. Investigator(s) and Identifying Information.
- (1) Ms. Jean Cook, GS-13, Investigator, Office of the Inspector General, Commander, Naval Air Systems Command (COMNAVAIRSYSCOM), Tel: (301) 758-9018 or DSN 288-9018, e-mail: jcook@navair.navy.mil.
- (2) Mr. John Hays, GS-12, Investigator, Office of the Inspector General, COMNAVAIRSYSCOM, Tel: (301) 758-8912 or DSN 288-8912, e-mail: jhays@navair.navy.mil.
- **b. Location of working papers.** Commander, Naval Air Systems Command, Office of the Inspector General, Attn: AIR-00G, 22145 Arnold Circle, Unit #7, Bldg 404, Suite 100, Patuxent River, MD 20670-1541

- b. **Section 2: Background and Summary.** Include the hotline control numbers, a summary of the complainant's allegations, optional information that may help the reader to understand the case, the outcome of the case, and the list of allegations. Section 2 has three mandatory subparts and two optional subparts:
  - 1) **Subpart a** Hotline Control numbers. DoD/Navy Hotline/Command Hotline numbers and a brief description of when each office transferred the complaint.
  - 2) **Subpart b** Summary of Complaint. A brief summary of the complaint in the Investigating Officer's (IO) words, not the complainant's.
  - 3) **Subpart c Optional.** Additional information to help the reader understand the case, i.e., outcome of previous or related investigations, results of Preliminary Inquiry, and if any allegations were referred to the command or other process for investigation.
  - 4) **Subpart d** Summary of the Outcome of the Investigation. A brief summary to include the number of allegations, number of substantiated allegations and disposition for substantiated allegations, if action has been taken.
  - 5) **Subpart e Optional.** List of Allegations.

## **Sample Background and Summary**

- 2. Background and Summary
  - a. Hotline Control #s, Dates of Receipt, and Tasking Dates
- (1) DoD Hotline # 72033 DoD received the complaint on 10 May 2003 and tasked NAVINSGEN on 30 May 2003
- (2) NAVINSGEN # 20030435 NAVINSGEN received DoD complaint # 72033 on 4 June 2003 and tasked COMNAVAIRSYSCOM on 8 June 2003
- (3) NAVAIRSYSCOM Case # H02-034 NAVAIRSYSCOM received the NAVINSGEN tasking letter and complaint on 12 June 2003 and tasked to the IO on 20 June 2003
- **b. Summary of Complaint.** The complainant alleged three COMNAVAIRSYSCOM employees, Ms. Sylvia Chase, Ms. Paula Collins and Ms. Marie Powell, were on temporary duty (TDY) from 1-5 March 2003 while attending a conference in San Diego, California. The complainant alleged that Ms. Chase did not attend the afternoon conference session on 3 March 2003 and did not return to the conference on 4 March 2003. The caller also alleged that Ms. Chase returned to Reagan-National Airport, Washington, D.C., vice

Dulles Airport, as scheduled, and did not pay the additional costs for the flight change.

- **c.** Additional Information (Optional). The COMNAVAIRSYSCOM database did not reveal any previous substantiated allegations against Ms. Chase.
- **d. Summary of the outcome of investigation.** Our review of the complaint determined two of the allegations warranted investigation. We substantiated one allegation against Ms. Sylvia Chase. Based on the evidence, we concluded Ms. Chase did not attend the afternoon session of the C4I Conference on 3 March and did not attend the conference on 4 March. We are forwarding the investigation recommending the chain of command take appropriate action to hold Ms. Chase accountable for misusing her official time in violation of Joint Ethics Regulation (JER) § 2635.705 while at the conference.

## e. List of allegations (Optional).

- (1) That Ms. Sylvia Chase improperly abused her official time by not attending a working group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2 § 2635.705, Use of Official Time.
- (2) That Ms. Sylvia Chase returned from San Diego to Reagan-National Airport vice Dulles Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of the Joint Travel Regulations (JTR), Chapter 2, § C2001A, (full title of reg.)

### c. Section 3: First Allegation.

- This section is the "meat of the IR." Begin with the first allegation. Present the facts, analyze and discuss the facts and, if appropriate, make a recommendation. State the conclusions and include the disposition to document the corrective action the responsible authority took regarding any substantiated allegations. The Investigative Plan is the blueprint for this section. In the Plan, you documented all of the information you will need to discuss each allegation, to include the applicable rules and regulations.
- 2) When preparing the report, place the allegations in the order you intend to discuss them. The order depends on a number of factors. Consider organizing and discussing the allegations in one of these ways:
  - (a) In chronological order, if the timeline of events is essential to the

- overall understanding and flow of the report
- (b) Conceptually linked or that share common facts
- (c) Beginning with substantiated allegations and then unsubstantiated allegations
- (d) More serious to less serious or sensitive subject matter
- (e) State the standard first then the chronology of event
- (f) State the facts supporting the allegation, then the facts refuting the allegation
- (g) If the facts are in dispute, state the complainant's version, the subject's version, then the neutral parties' version.
- 3) You are now prepared to introduce the **first allegation** and discuss it:
  - (a) State the first allegation in the proper format, to include the criminal/regulatory violations, and whether it was Substantiated or Unsubstantiated.
  - (b) Present the Facts related to the allegation.
  - (c) Analyze and discuss the Facts.
  - (d) Conclude whether the allegation was Substantiated or Unsubstantiated.
  - (e) Make Recommendation(s) (when appropriate).
  - (f) State the Disposition (corrective or administrative action taken as a result of a substantiated allegation).

#### a. **Facts**

Present the evidence in this section. State the facts you gathered from interviews, documents, and the applicable regulations and statutes. Organization and content of the facts are critical to a good report. Logically organized facts promote easy understanding. Do not include your opinion in this section.

#### **Sample Facts**

#### a. Facts.

5 CFR Part 2635.705 states that an employee shall use official time in an honest effort to perform official duties

Mr. Taylor Rutkowski, Ms. Chase's supervisor, authorized Temporary Duty orders for her to travel on 1 March 2003 and attend the Space and Naval Warfare Systems Command (SPAWAR), Command Communication, Control, Capture and Intelligence (C4I) conference in San Diego, California, held from 2-4 March, and to return to her residence on 5 March 2003.

The Conference Schedule of Events and Presentations listed Ms. Chase as a panel participant for the C4I Network Users' Working Group at 1300 on 3 March 2003. She was also scheduled to be a member of the Network Users' Working Group all day on 4 March 2003.

Mr. Randall Lopez, the Conference Chairperson and Panel Moderator for the C4I Network Users Working Group, stated Ms. Chase was scheduled to be a panelist on his working group on 3 March 2003 beginning at 1300. He stated she was not seated on the panel during the entire afternoon session, as scheduled. Mr. Lopez stated Ms. Chase called him Wednesday evening to let him know she was ill and apologized for not attending the working group. Mr. Lopez stated Ms. Chase also told him she would not be attending the Thursday working group due to illness.

Ms. Collins stated that around 1200 on Wednesday, 3 March 2003, Ms. Sylvia Chase drove her to Rio Grande, a nearby restaurant, for lunch where they met Ms. Chase's friend, Mr. Roy Martin. She recalled that she, Ms. Chase, and Mr. Martin ordered margaritas and that Ms. Chase and Mr. Martin ordered a second round of margaritas. She stated that she saw Mr. Toti Papas and Ms. Armandina Sanchez, at the restaurant and asked if she could ride back with them so she could make some phone calls before the afternoon session began. She stated Ms. Chase did not sit on the working group panel on the afternoon of 3 March. She stated she became concerned about her so she called her Wednesday evening, but she did not answer the telephone. Ms. Collins stated she and Ms. Chase were in the same working group on 4 March, but she did not see her there either.

Ms. Joyce Cranston, a conference participant, stated she sat next to the door during the C4I Network Users Working Group on the afternoon of 3 March 2003. She was quite certain that Ms. Chase was not seated on the panel. She stated she did not see her enter the room at any time during the afternoon session on 3 March. Ms. Cranston also stated Ms. Chase did not attend the working group on Thursday, 4 March.

## Sample Facts (Continued)

Mr. Toti Papas, a conference attendee, stated he attended the Wednesday, 3 March and the 4 March, Network Users' Working Group and that Ms. Chase was not present at either.

Ms. Powell stated she was not a member of the Network Users' Group so she did not know whether or not Ms. Chase attended either the 3 March or the 4 March sessions. Ms. Powell recollected Ms. Collins asked her on Wednesday evening at dinner whether or not she had seen Ms. Chase and that she seemed concerned about her.

Ms. Armandina Sanchez stated she went to lunch with Mr. Toti Papas at the Rio Grande on 3 March 2003 around noon. She stated she noticed Ms. Chase having lunch with a man and Ms. Collins and that Ms. Chase was talking loudly. Ms. Sanchez stated she saw the waitress bring margaritas to Ms. Chase's table. Ms. Sanchez recalled Ms. Collins asking for a ride to the conference. She stated Ms. Collins rode back with them. Ms. Sanchez remembers that Ms. Chase was still seated at her table when she, Mr. Papas, and Ms. Collins left the restaurant. Ms. Sanchez stated she was in a different working group located in a different area of the Center on 3 March and 4 March and that

she did not see Ms. Chase on either day at the Conference.

Ms. Chase, stated she had lunch on 3 March 2003 with Ms. Collins and with Mr. Martin, a friend, who lived in the local area. She stated she became extremely ill after lunch and Mr. Martin took her to the emergency room. Ms. Chase stated she had gotten food poisoning from something she ate at the Rio Grande. She stated she was so sick that she could not attend the afternoon session on 3 March. She stated she called Mr. Lopez to explain why she did not come on Wednesday and told him she would not be at the session on Thursday. She stated she forgot to call her supervisor in Washington DC to let him know that she was sick and unable to attend either working group. She stated that she forgot to submit a "Request for Leave" for the sick leave she took while she was in San Diego at the conference.

Mr. Taylor Rutkowski, Ms. Chase's supervisor, stated that he directed her to be a panelist for the C4I Network User's Working Group during the afternoon session on 3 March 2003 at 1300. Mr. Rutkowski stated Ms. Chase did not inform him when she returned from the conference that she did not sit on the panel, attend the Network Users' Working Group on 3 March, or attend the working group on 4 March 2003. Mr. Rutkowski did not recall Ms. Chase submitting a leave slip for her absence on those days.

The COMNAVAIRSYSCOM time and attendance records do not show that Ms. Chase submitted a "Request for Leave" for 3 March or 4 March 2003.

Mr. Roy Martin, a civilian (non-government) friend, had lunch with Ms. Chase and Ms. Collins on 3 March 2003. He declined to be interviewed.

## Section 3: First Allegation (continued)

## b. Analysis, Discussion, and conclusion

In this subpart you:

Analyze how the standards apply to the testimony and documents.

Explain and discuss the weight you assign to the evidence and how it substantiates or refutes the allegation.

Resolve conflicting evidence.

Explain your rationale for the conclusions.

Include extenuating or mitigating factors if the allegation is substantiated when necessary, i.e., "...however, the facts indicate the subject was motivated by concern for subordinates and not self-interest."

Never include new facts, nor restate facts set forth in the findings.

End with your opinion based on the analysis of the evidence.

If the facts conflict, reconcile them. If you cannot reconcile them, explain why one

version of the facts may be more credible than the other. Never leave conflicting facts out of the report! Where there is substantial disagreement over the facts, it may be helpful to present the complainant's story, followed by the subject's version. Facts provided by neutral parties should follow, ending with a discussion that reconciles or selects between conflicting facts.

Your explanation may consist of identifying two groups of witnesses, then taking the majority accounting of an event.

#### Remember:

You are more persuasive when there is a logical flow between the facts and the conclusions.

Generally, you must address questions of perception, bias, competence and veracity, as it is the quality of the evidence, not the quantity that resolves disputed issues.

As you sift through the facts, you may find some facts are irrelevant and some conflict. Always disregard those that are irrelevant (or immaterial) and explain those that conflict.

**SAMPLE** Analysis, Discussion, and Conclusion

## Sample Analysis, Discussion, and conclusion

## b. Analysis, Discussion, and Conclusion.

- (1) Ms. Chase was on official government orders to attend the C4I Conference from 1 to 5 March 2003 and her supervisor had directed her to participate in the working groups on 3 and 4 March.
- (2) Mr. Lopez, Ms. Collins, Mr. Papas, and Ms. Cranston testified Ms. Chase was not seated on the panel during the Network Users' working group on the afternoon of 3 March.
- (3) Mr. Lopez, Ms. Collins, Mr. Papas and Ms. Cranston testified Ms. Chase did not attend the Network Users' Working Group on 4 March.
- (4) According to Ms. Chase, she got sick during lunch at the Rio Grande restaurant on Wednesday, 3 March, and was unable to return to the conference on Wednesday afternoon and Thursday. Although she called Mr. Lopez, the Conference Chairperson, to let him know why she was not at the working group and to tell him she would not attend the Thursday session, she did not tell her supervisor, Mr. Rutkowski, or submit a leave request for those days.
- (5) Ms. Chase did not use her official time in accordance with 5 CFR Part 2635.705. Based on this evidence, we concluded the allegation is **Substantiated**.

## Section 3. First Allegation (continued)

#### c. Recommendations

Make general recommendations in your Investigative Report. If you substantiate an allegation against an individual subject, **do not** recommend specific punitive, disciplinary, adverse, or administrative actions. Your recommendations should be general in nature. Instead, recommend the higher authority take "appropriate action to hold the subject accountable."

You may, however, recommend the command take specific measures to address systemic problems or program weaknesses to "fix the system," e.g., rewrite an instruction.

## Sample Recommendation

(4) Recommendation. Take appropriate administrative action to hold Ms. Sylvia Chase accountable.

#### d. Disposition

The Disposition is the report of action taken by responsible authority when an allegation is substantiated. Three ways to report the Disposition are:

No substantiated allegation(s) – State: "None"

**Substantiated allegation(s) when corrective action has been taken** – State the action taken, to include who took what action and when. For example: CAPT John Miller, the Executive Officer, counseled LT Jones on 7 July 2004.

**Substantiated allegation(s) when corrective action has not been taken** – State: "Forwarded to higher authority for appropriate administrative and/or corrective action." The immediate tasking authority must then report subsequent action via an endorsement or follow-on correspondence.

### **Sample Disposition**

**DISPOSITION**: Forwarded to higher authority for appropriate administrative and/or corrective action.

<u>Section 4 or 5: Interviews and Documents (Last Section)</u> Section 4 (or Last Section) lists and describes the interviewees, the documents you reviewed, and any other evidence you collected.

1. **For Official Use Only**. Use this format on the bottom of the page (for long reports use this FOUO warning on the 1<sup>st</sup> and last pages).

Official Use Only – Privacy Sensitive

Any misuse or unauthorized disclosure may result in both civil and criminal penalties.

The number of Sections varies according to how many allegations you address in your report. If you only have one allegation, the Interviews and Documents list will be Section 4.

List and describe the interviewees, the pertinent documents, and any other relevant evidence you collected.

The **Interviewee List** includes the full name of the interviewee, his/her position or subject matter expertise, and the grade/rank of each employee. The list reflects whether you conducted the interviews by telephone or in person.

The **Document List** includes all the information the reader would need to locate the exact document, to include the title, number and section of the statute or regulation, description of the document, and the dates and times (e-mail).

## Sample Interviews and Documents list

- 5. **Interviews and Documents** (abbreviated version of actual list)
- **a. Interviews conducted**. (All interviews conducted in person unless otherwise noted.)
- (1) Ms. Sylvia Chase (subject), COMNAVAIRSYSCOM Deputy Program Manager, PMA 277, GS-14
- (2) Ms. Paula Collins (witness), COMNAVAIRSYSCOM Level II Team Leader, PMA 277, GS-13
- (3) Ms. Marie Powell (witness) COMNAVAIRSYSCOM Program Analyst, PMA 277, GS-11
- (4) Mr. Taylor Rutkowski (witness), COMNAVAIRSYSCOM Program Manager, PMA 277

#### b. Documents reviewed.

- (1) Joint Travel Regulations, Volume 2 (2 JTR) §§ C2001A
- (2) Joint Ethics Regulation (JER), Chapter 2 § 2635.705
- (3) Ms. Sylvia Chase's travel order (#67895) dated 23 February 2003 and related travel voucher dated 7 March 2003, receipts/attachments and Defense

## 0607 Partially Substantiated Allegation

**NOTE:** Allegations cannot be partially substantiated. You must break out each issue into separate allegations. You should have only **one subject** and **one wrongdoing**.

For this example, we have combined allegations #1 and #2 into one allegation.

## PARTIALLY SUBSTANTIATED ALLEGATION:

(1) That Ms. Sylvia Chase improperly used her official time when she did not attend a mandatory working group on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of 5 CFR Section 2635.705, Use of Official Time, and she returned from San Diego to Reagan-National Airport vice Dulles Airport incurring additional costs for the flight change and fare increase, for which she improperly claimed reimbursement on her 7 March 2003, Travel Claim, in violation of the JTR § C2001A.

**Analysis, Discussion, and Conclusion**: (Last paragraph) Based on the evidence, this allegation was partially substantiated. Ms. Chase did not attend either working group session on 3 March or 4 March, but she did pay for the extra charges associated with her travel to Reagan-National Airport on 4 March 2003.

#### **NEW ALLEGATIONS:**

- (1) That Ms. Sylvia Chase improperly used her official time when she did not attend a mandatory working group on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of 5 CFR Section 2635.705, Use of Official Time.
- (2) That Ms. Sylvia Chase returned from San Diego to Reagan-National Airport vice Dulles Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of the Joint Travel Regulations (JTR), Chapter 2, § C2001A, Transportation Modes, Accommodations, Transportation Requests, Baggage and Mileage

See the format for the Letter Report (LR) on the next page.

## 0608 Letter Report (LR) Format

Refer to this section to prepare the Letter Report. The report will have three sections, if you only address one allegation, and more sections depending on how many additional allegations you investigate.

## 0608.1 Guidelines

Use the Letter Report when:

1. Your conclusions are based on clear, convincing and undisputed direct evidence and you do not have to discuss and weigh the evidence or circumstances of any allegation to explain why you arrived at a your conclusion.

**Note:** The above condition must **always** exist for **all** allegations for you to submit the investigative results in the LR format. Where the finding for at least one allegation is unclear and you must weigh and discuss the evidence, then the Investigative Report (IR) format must be used to submit the results for all allegations.

- 2. The IO was unable to associate a standard with an allegation; and/or, The action occurred as described in the allegation, but did not violate any standard; and/or,
- 3. The IO was unable to pursue an inquiry or investigation due to a lack of sufficient information/leads for an allegation; and/or,
- 4. The subject admitted to an allegation; and/or,
- 5. The IO concluded that an allegation contained in the complaint was either substantiated or unsubstantiated based on the existence of another investigation, i.e., JAGMAN, command directed, NCIS report. You may not submit the previous investigation report in lieu of an IG Letter Report. The pertinent information must be rewritten in the Letter Report format.

**Note:** If a conclusion is based on an inquiry or another investigation that substantiated an allegation, if possible, interview the subject to record his/her explanation of why he/she violated a rule/regulation and to offer mitigating factors, especially if there is the possibility of further accountability action. Additionally, when possible, interview the investigating officer(s) who conducted the previous investigation.

### 0608.2 Letter Report Sections

**Section 1** is the Administrative Section where you discuss the complaint in general terms; list the investigating official(s), location of working papers, and hotline control numbers.

## **Letter Report Sections (Continued)**

**Section 2** is the Background and Summary Section (Optional). Include a summary of the allegation, optional information that may help the reader to understand the case, the Findings of the case, and a list of allegations.

**Section 3** introduces the First Allegation. State the allegation to include criminal/regulatory violation and whether it was **Substantiated** or **Unsubstantiated**. Present the facts, discuss your conclusion, make a recommendation (if applicable), and state the disposition (if applicable) to document the corrective action the responsible authority took regarding any substantiated allegations. If additional allegations follow, address each in the same way in subsequent paragraphs.

Refer to the Workbook for a sample outline and report.

## 0609 For Official Use Only

Use this format on the bottom of the 1<sup>st</sup> and last page.

Official Use Only – Privacy Sensitive

Any misuse or unauthorized disclosure may result in both civil and criminal penalties.

## 0610 Letter Report (LR) Format

## **Letter Report Sections**

#### **Section 1: Administrative Information**

Section 1 has three subparts:

Open the paragraph with an overview of the investigation to include a general statement concerning the allegation(s). The initial paragraph should end with the words: "Subsequently, we concluded that the facts in this case were unequivocal and undisputed and that further (inquiry or investigation) is unwarranted."

**Note:** Do not use the terms unequivocal and undisputed unless they apply. If the investigation results are not unequivocal and undisputed, use an Investigation Report format.

**Subpart a** - List **all** of the investigators, not just the lead investigator. Include the full name, rank/grade, command, position in the command, telephone number, and e-mail address.

**Subpart b** – Provide the exact location of the working papers. Include the command, office, and address, to include the room number.

**Subpart c** – List all of the Hotline Control Numbers.

See a sample Letter Report on the next page.

## **Letter Report Sections (continued)**

## Sample Administrative Section Letter Report

5041/200xxxxx Ser N6x/ (date)

From: (command)
To: (command)

Subj: DOD HOTLINE COMPLAINT xxxxx (200xxxxx); COMPLETION REPORT

Ref: (a) DoD Memo of 6 May 03

- (b) NAVINSGEN Investigations Manual (July 1995)
- (c) NSHS Bethesda Instruction 1520.1
- (d) CME Program Guidebook
- (e) DoD Financial Management Regulation
- (f) United States Code, Title 31
- (g) Joint Travel Regulations
- 1. Reference (a) forwarded an anonymous DoD complaint that alleged two violations. Per reference (b), we reviewed the complaint and conducted an investigation to determine the truth in the matter. Subsequently, we concluded that the facts in this case are unequivocal and undisputed and that further investigation is unwarranted. (see **Note** in paragraph 0610)
  - a. Investigator(s) and Identifying Information.

Ms. Dorothy James, GS-13, Bureau of Medicine & Surgery (BUMED), 8901 Wisconsin Ave, Bethesda, MD 20889-5615, telephone: (301) 295-9010, e-mail: <a href="mailto:djames@us.med.navy.mil">djames@us.med.navy.mil</a>.

Mr. Harry Phillips (subject matter expert), GS-13, Auditor, BUMED Comptroller Department, 8901 Wisconsin Ave, Bethesda, MD 20889-5615, telephone: (301) 295-8884, e-mail: <a href="mailto:hphillips@us.med.navy.mil">hphillips@us.med.navy.mil</a>.

**b. Location of Working Papers**. Inspector General, Bureau of Medicine & Surgery (BUMED), 8901 Wisconsin Ave, Bethesda, MD 20889-5615.

#### c. The hotline control numbers are:

DoD Hotline #xxxxx – Received complaint 10 June 2003 NAVINSGEN #200xxxxx – Received complaint on 5 July 2003 BUMED received complaint on 16 Jul 2003

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## Section 2: Background and Summary

Section 2 is an optional paragraph and may contain any background or optional information to help explain the circumstances surrounding the investigation or an explanation that may assist the reader in understanding the report. It may contain the results of the Preliminary Inquiry and if any allegations were referred to the command or other process for investigation. You may also use this section to discuss any problems you encountered during the investigation.

## Sample Background and Summary Section

2. The first allegation alleged that Captain (CAPT) John Grant, a physician assigned to the Naval Operational Medicine Institute, Pensacola, Florida improperly attended some medical conferences in Canada and Florida during 2002-2003 for personal gain. By attending the conferences, the complainant added that Captain Grant obtained continuing education credits for his medical profession; was trying to become a Certified Medical Investigator; and was establishing or continuing his medical license in various states. Second, the complainant alleged that Captain Willard Rogers, the Chief Staff Officer, abused his authority by improperly approving Captain Grant's travel orders that authorized him to drive rather than fly to these conferences. The BUMED database did not reveal any previous complaints or investigations concerning either subject. Our database indicated no previous complaints regarding either subject. We found both allegations were unsubstantiated. Based on the evidence, we concluded the complaint was unfounded and that the TAD orders were properly authorized and executed in accordance with current directives. No action is required.

## **Section 3: First Allegation**

Section 3 is the "meat of your letter," and your Investigative Plan is the blueprint for the report. In the Plan, you have documented all of the information you will need to discuss each allegation, to include the applicable rules and regulations.

When preparing the report, place the allegations in the order you intend to discuss them. The order depends on a number of factors. Consider organizing and discussing the allegations in one of these ways:

In chronological order, if the timeline of events is essential to the overall understanding and flow of the report:

- Conceptually linked or that share common facts
- Beginning with substantiated allegations and then unsubstantiated allegations
- More serious to less serious or sensitive subject matter
- State the standard first then the chronology of events
- State the facts supporting the allegation and/or the facts refuting the allegation

You are now prepared to introduce the **first allegation** and discuss it:

- State the first allegation in the proper format, to include the criminal/regulatory violations, and whether it was **Substantiated** or **Unsubstantiated**.
- Present the facts related to the allegation.
- Conclude whether the allegation was **Substantiated** or **Unsubstantiated**.
- Make recommendation(s) (when appropriate).
- State the disposition (corrective or administrative action taken as a result of a substantiated allegation).

## **Sample Allegation Section**

- 3. <u>First Allegation</u>. That Captain Grant wasted government funds by improperly attending medical conferences in Canada and Florida during 2002-2003, in violation of NSHS Bethesda Instruction 1520.1, Navy Medical Corps Continuing Medical Education (CME) Program. **Unsubstantiated**.
- a. We reviewed references (c) and (d), which outline the Bureau of Medicine and Surgery's (BUMED) and the Naval Medical Education and Training Command's (NMETC) Continuing Medical Education (CME) Program. These programs strongly support continuing education for medical personnel to foster on-going professional growth. They generate an academic environment at medical departments by involving medical personnel in continuous education. Moreover, the programs provide accreditation in the latest medical practices.
- b. A review of CAPT Grant's TAD orders from 1 January 2002 through 1 June 2003 showed eight sets of orders. Of these, three involved schools under the BUMED Program. CAPT Grant attended two schools in the local area on no-cost orders and another at Naval Air Station Meridian, MS, on funded orders. While attending training at Meridian, he was authorized a Privately Owned Conveyance (POC). None of the schools were in Canada; however, one set of TAD orders to Ottawa, Canada was present and determined to be operational rather than educational in nature. All of the operational orders directed the use of government air.

## **Letter Report Sections (continued)**

## **Sample Allegation Section (cont)**

- c. A review of the command's order writing/approving process showed Dr. John Straight, the Director of the Medical Education Command, approved the 3 sets of orders and verified they involved educational programs and fell within the scope of the CME criteria. Also, CAPT Rogers, the Chief Staff Officer, reviewed each CME request and set of orders for the command. He was authorized by the Commanding Officer to sign and approve TAD orders as an Accountable Official per reference (e) and act as a Certifying Officer to verify travel vouchers per reference (f).
- d. We concluded that CAPT Grant's three sets of CME orders were properly submitted and reviewed by Dr. Straight to qualify under the program. Also, they were properly submitted and approved by CAPT Rogers as an Accountable Official for authorizing TAD orders and as a Certifying Officer for approving completed travel vouchers. We did not find any violation of a rule or regulation after reviewing the references and comparing the standards with the facts.

Continue with additional allegations, as required. See next page.

- 4. <u>Second Allegation</u>. That CAPT Rogers abused his authority as Chief Staff Officer by improperly approving Captain Grant's travel orders, which authorized him to drive rather than fly to Meridian, MS to attend training in November 2003, in violation of the Joint Federal Travel Regulations, Volume 1, Uniformed Service Personnel, Ch. 3 Transportation, Accompanied Baggage, and Local Travel, and Ch. 4 Temporary Duty Travel TDY DoD Financial Management Regulation, and Volume 5, Disbursing Policy and Procedures, Chapter 33, Accountable Officials and Certifying Officers; and United States Code, Title 31, Money and Finance. **Unsubstantiated**.
- a. We reviewed CAPT Grant's TAD orders, receipts and Defense Finance and Accounting System (DFAS) Travel Voucher Summary for training in Meridian, MS. He was authorized the use of his Privately Owned Conveyance (POC) to attend the training and authorized one day of travel to drive to/from Meridian per reference (g). CAPT Rogers approved the travel orders per references (e) and (f).
- b. Reference (g) authorizes the use of a POC when executing TAD orders as long as it "...is more efficient, or economical,... [or] 2. There is no practicable commercial transportation [available...." We contacted the local SATO Office and determined transportation by government air was available at a cost of \$670.00. A review of CAPT Grant's summary showed the cost of his POC travel was \$218.45.
- c. We concluded the set of TAD orders for CAPT Grant to attend CME training in Meridian was properly submitted, authorized and liquidated in accordance with current directives. We did not find any violation of a rule or regulation after reviewing the references and comparing the standards with the facts. Also, we determined that the use of a private vehicle was the most economical use of government funds.
- 5. (Command) considers this case closed.

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#### 0611 Progress Report (PR)

When you cannot complete an investigation or disposition within the required timeframe, you must submit a Progress Report (PR) to request an extension of the due date.

The Progress Report provides the status of the investigation, identifies any problems encountered, particularly those that may delay the investigation or require the attention of higher authority and explains the reason for delay.

Even if you submit a Progress Report, you must write a stand-alone, final report.

SAMPLE DOD/NAVY
HOTLINE PROGRESS REPORT
10 SEPTEMBER 2003

- 1. Applicable DOD Component: Department of the Navy
- 2. Hotline Control Number(s):

DoD Hotline # 72033 Navy Hotline # 20030435 NAVAIR Case # H03-034

- 3. Date Referral Initially Received: 16 June 2003
- 4. Status:
  - a. Name of organization conducting investigation: Commander, Naval Air Systems Command
  - b. Type of investigation being conducted: DOD Hotline
  - c. Results of investigation to date (summary): We have investigated the four allegations submitted by the complainant; three of the allegations are unsubstantiated and the fourth is under review. Moreover, we have developed two emerging allegations; both are ongoing.
  - Reason for delay in completing investigation:
     Delay in receipt of tasking and developed two additional allegations during investigation.
  - e. Request extension to 30 October 2003.
- 5. Expected Date of Completion: 25 October 2003
- **6.** <u>Action Agency Point of Contact (POC) and Organization</u>: Ms. Jean Cook, GS-13, Investigations Specialist, tel: (301) 758-9018 or DSN 288-9018, e-mail: <u>jcook@navair.navy.mil</u>, Office of the Inspector General, Commander, Naval Air Systems Command (COMNAVAIRSYSCOM)

## Progress Report (PR) (continued)

**NOTE:** When a <u>DoD</u> investigation is **not complete** and a due date is approaching, submit the above form to report the status of the investigation and to request an extension. We prefer you send the PR by e-mail or fax; you do not need to include a forwarding/endorsement letter.

For <u>Navy Hotline extensions</u>, typically NAVINSGEN grants 1 due date extension by telephone, facsimile, or e-mail. Subsequent PRs should be forwarded using the PR format discussed above.

## 0612 Common Report Writing Mistakes

Investigators often make mistakes in report writing because they are over familiar with the case. A good practice for investigators is to ask someone who is authorized to read the report to review it before forwarding it to higher authority, preferably someone who has no knowledge of the case. Another set of eyes often catches mistakes you have overlooked. Some common report writing mistakes related to each of the four standards are listed below.

## **Completeness – Common Errors**

- Not following the recommended report format
- Wording allegations improperly critical to organization of the report
- No standards (regulations/statutes) and no discussion of how they apply
- Attaching enclosures Remember the report "Stands Alone"
- Failure to obtain legal review/SME advice
- Not including mitigating facts/evidence and a discussion/analysis of those facts
- Conclusions not supported by Facts/Analysis
- Evidence gathered, but not reported based on over-familiarity with the case or the IO's assumption that something is apparent to the reader that is not obvious
- Failure to clearly explain and resolve conflicting information. Weighing the evidence may not be sufficient. Examine the quality of the evidence and include any information in the analysis that helps the reader understand how you came to your conclusion.
- Reluctance to include evidence that does not support or that contradicts your conclusions.

## **Common Report Writing Mistakes (continued)**

## **Independence – Common Errors**

- Failure to provide enough information about the Investigating Officer to help reader determine independence
- Apparent bias Intemperate Language/Judging the Complainant

### **Timeliness – Common Errors**

No progress reports to tasking authority

Late reports – due dates expired – work with the tasking authority to ensure the report is timely.

## **Accountability – Common Errors**

- Investigating Officer recommends specific disciplinary action for subjects –
   Remember: This is the chain of command's responsibility
- Not timely reporting the Disposition

#### Note:

A good technique to avoid mixing up facts, opinions, and conclusions is to highlight each sentence in the IR that is not a statement of fact. This will ensure the facts and opinions are in the correct sections. You may also consider creating an endnote for each statement of fact when writing the draft Investigative Report. Maintain this document in the file in the event questions arise regarding the origin of the information. The endnotes should not be in the final version of the report.

### 0614 Forwarding the Report

Use the Post-Investigation checklist (see the Investigations Workbook, Exercise 2, Judging the Investigation) to conduct a quality review of the Investigation Report and Letter Report before forwarding it to the tasking authority. Tasking authorities should sign and date the checklist before forwarding the report to a higher review authority to ensure all the criteria has been met. Use of the checklist will ensure mistakes are caught early.

## In Summary...

- Include all relevant evidence, whether it supports or contradicts your conclusions. Provide your reasoning for discounting facts that contradict your conclusions.
- Reconcile conflicts. If you cannot reconcile them, explain why one version of the facts may be more credible than the other.
- Focus on the quality of evidence, not the quantity to resolve disputed issues.
- Cite and discuss all the standards.

# **Chapter 7**

# Maintaining the File and Release of Information

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#### 0701 Maintaining the Case File \*\*

Proper management, retention, and release of IG case files are an integral part of the IG function. During the course of an investigation, you will create and gather numerous documents to include:

- Complaints;
- Tasking letters;
- Legal opinions;
- Investigative and interview plans;
- Contact and witness lists;
- Investigator notes;
- Notes of phone conversations;
- Routing slips;
- Travel and expense reports;
- Complainant, witness and subject statements;
- Results of Interview reports;
- Correspondence;
- Contracts;
- Laws, regulations, directives, instructions and policy statements; and,
- Drafts of many of the aforementioned documents.

The key to good file management is to:

- Organize documents to facilitate supervisory review and to enable another investigator to quickly and easily access information in the file on short notice;
- Clearly identify and label draft documents;
- Note computer file names on hard copies for quick reference; and,
- Maintain electronic copy backups in the case file or state their location in the case file.

#### 0702 Document Retention 🗫

# 0702.1 Open Investigation September 20702.1

Do not discard any documents unless you are absolutely certain they are irrelevant, e.g., duplicates. Exceptions to this rule are you may destroy:

- Drafts of documents they should be retained only if necessary to document their contents, for example, to establish you considered a certain line of reasoning; and,
- Drafts of interviewee statements retain them only if it is important to document the changes made by the interviewee, particularly if the investigator and interviewee disagree about what was said.

# 0702.2 Closed Investigation 494

You <u>must</u> retain these documents, as you may need to refer to them to answer questions from higher authority or to support your findings:

- Complainant's correspondence;
- Tasking or forwarding letters;
- Completed Investigative Report or Letter Report;
- Investigative Plan, Contact, Notification, and Witness List;
- Documents pertinent to the facts (not readily available instructions);
- Travel and expense records of subject(s);
- All sworn and unsworn statements;
- Legal opinions;
- Interviewee notes and Record of Interviews; and,
- Correspondence to complainants/subjects.

**NOTE**: You may consider purging command instructions, policy statements, and organizational manuals unless you intend to keep them as part of a separate "library" for future reference.

# 0703 Document Disposal

Upon closing the investigation, review the file to eliminate unnecessary documents in preparation for storage. Retain all documents, if criminal prosecution is a possibility. Otherwise, all extraneous material should be removed. Examples of documents you may consider discarding are:

- Telephone logs;
- Notes of phone calls not pertinent to the IR;
- Maps/directions;
- Post-it notes;
- Gratuitous remarks; and,
- Investigator's travel and expense records.

# 0704 Storing the File > 4

After you "cleanse" the file, maintain the record in accordance with SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposition Manual". Generally, you should store non-historical records for 10 years and then destroy them. Contact the NAVINSGEN legal office if you have any questions.

Remember: Embarrassment is not a legitimate basis to withhold information from a requestor. You should prepare the file for possible release before you receive a request. Be prepared to defend what is left in the file.

#### 0705 Release of a Case File for Official Purposes 444

IG investigations are conducted "For Official Use Only". While an investigation is open, information is not normally releasable to personnel outside the DoN IG chain of command.

Once the investigation is closed, your report and other documents may be released to those who have an official need to see and use it.

If the responsible authority undertakes disciplinary action, subjects usually have due process rights that permit access to most, if not all, of the file.

# 0706 Privacy Act (PA) 5 U.S.C. § 552a 🗫 🔺

The Privacy Act provides individual rights regarding personnel records and allows individuals access to Government records pertaining to themselves. It establishes a right:

- To know what the records contain; and
- To seek correction of erroneous information.

Before a person may invoke the PA, the information must be:

- Personal in nature;
- Maintained in a "system of records"; and,
- Routinely retrieved using personal identifiers, such as names or social security numbers

Case files in an IG organization are maintained in a "Privacy Act System of Records" if the system is maintained in accordance with the NAVINSGEN system. They must be safeguarded under the PA, but are generally available to the individual (not to third parties.)

Exemptions to release of Privacy Act information are:

- General exemptions

5 U.S.C. § 552a(j)(1) & (2); for CIA and "police" agencies.

- Specific exemptions

5 U.S.C. § 552a(k) [(k)(2) is applicable to IG reports.]

# 0707 Freedom of Information Act (FOIA) 5 U.S.C. § 552 \*\*\*

Unlike the Privacy Act (PA), the Freedom of Information Act (FOIA) insures everyone has access to Government records, whether or not the information is about them.

The FOIA is a uniquely American concept that originated from the idea that people are the masters of the Government, not vice versa. The intent of establishing FOIA was to prevent a secret government.

DoD and DoN policy states that persons requesting information about them are entitled to have their request reviewed under both FOIA and PA. The reviewer must release the information under whichever statute allows the greater release of information.

FOIA exemptions routinely invoked concerning IG reports are:

- (b)(5) Opinions and recommendations;
- (b)(6) Information obtained from medical and personnel;
- (b)(7) Investigative material compiled for law enforcement purposes;
- (b)(7)(C) Names and other personal identifiers; and,
- (b)(7)(a) Open investigation.

As discussed earlier, you cannot release any information in the case file while the investigation is open. Exemption (b)(7)(A) applies. The release of information from the case file could impede the investigation and be potentially harmful to the DoN. The investigation is not considered closed until responsible authorities have taken all final administrative action, to include disciplinary action.

Whether or not you release information under FOIA and the PA depends on who makes the request. Both FOIA and the PA apply to first party requests (subjects or complainants). Only FOIA applies to third party requests (spouse, press, or nosy coworker.)

#### 0708 Release Authority

The release authority for IG investigations varies. NAVINSGEN is the release authority for all DoD IG and Navy investigations it has conducted (by agreement with DoD IG) or tasked to other Don organizations.

All cases originating with a complaint to the hotline of another DoN organization are that organization's responsibility.

#### Example:

The release/initial denial authorities will process the FOIA release of a Commander, Naval Sea Systems Command (NAVSEA) hotline complaint investigated by a NAVSEA IG (or someone tasked by the NAVSEA IG) to NAVSEA for processing.

However, since NAVSEA would refer a hotline complaint concerning a SES employee to NAVINSGEN for investigation, NAVINSGEN would act as the release/initial denial authority

NOTE: Senior officials have less privacy protection than do lower ranking personnel because they are considered "public officials". Consequently, exemption (b)(7)(C) may not be available to withhold a senior official's name from release in substantiated cases.

# **Chapter 8**

# Reprisal

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# **0801 Whistleblowing Overview**

This chapter defines whistleblowing terms, the laws and regulations intended to protect whistleblowers and who is authorized to receive whistleblowing complaints. The chapter also presents the history of whistleblowing and whistleblower protection for civilian government employees, military personnel, non-appropriated fund employees, and contractors. It then discusses the IG's action upon receipt of a whistleblowing complaint, allegations of reprisal and how to conduct a reprisal investigation. The chapter includes an overview of the process used to refer service members for mental health evaluations.

#### 0802 Introduction to Whistleblowing

Over the years, the law has recognized that society benefits from the disclosure of wrongdoing. "Blowing the Whistle" on suspected impropriety is one of the principal means by which IGs become aware of situations that warrant investigation or inquiry.

Whistleblower is the term used when referring to any person who discloses information he or she reasonably believes is evidence of:

- A violation of any law, rule, or regulation;
- Gross mismanagement;
- A gross waste of funds;
- An abuse of authority; or,
- A substantial or specific danger to public health or safety.

To ensure no one suffers retaliation as a result of a disclosure, Congress enacted laws that encourage disclosure of certain types of wrongdoing by prohibiting retaliatory personnel actions. Various statutes apply to whistleblowing cases depending on the status of the employee. As noted in the charts on pages 8-6 thru 8-9, DoN IG organizations do not have primary jurisdiction in the investigation of allegations of reprisal for making protected whistleblower disclosures. In some cases, IG organizations have no authority depending on the status of the employee. Service IGs can receive military and NAF complaints However, IG organizations are not authorized to work the NAF complaints. Only DoD can receive contractor complaints and only OSC can receive Appropriated Funds complaints.

#### 0803 HISTORY OF WHISTLEBLOWER PROTECTION

#### 1968

Ernest Fitzgerald, a USAF civilian management systems deputy testified before Congress about \$2 billion cost overruns on C-5A program. Mr. Fitzgerald was fired on orders from Nixon White House. He was reinstated in 1982.

#### 1978

Civil Service Reform Act (CSRA) established whistleblower protection for Federal employees.

#### 1983

Whistleblower protection extended to non-appropriated fund employees

#### MID 1980s

\$7,600 coffee brewer

#### 1985

COL James Burton, USAF, reported testing irregularities in M-2 Bradley IFV program to Congress. His position was eliminated and he was threatened with relief for cause, transfer to Alaska, and forced retirement

#### 1986

Rep. Barbara Boxer (now Senator) introduced Whistleblower Protection Bill as an amendment to the FY-87 House Authorization Bill. The bill died in conference as the Services maintained no special legislation was required to protect whistleblowers.

#### 1987

House Armed Services Committee holds hearings on whistleblower protection.

Michael Tufariello, USNR, told local IG about reservists who were receiving pay for drills they never performed. CO directed Mr. Tufariello to undergo a Mental Health Exam. He was escorted to the hospital on Friday evening, but not seen by a doctor until Monday afternoon. He was released with no diagnosis of mental problems.

#### 1988

Sen. Boxer's "Military Whistleblower Protection Act" entacted as part of FY-89 Authorization Act (10 U.S.C. § 1034). The Act only protects communications with IGs and Congress.

#### 1990

10 U.S.C. § 1034 expanded to prohibited referral for Mental Health Examination as reprisal.

#### 1991

10 U.S.C. § 1034 expanded to extend protection to communications made to auditors, criminal investigators, inspectors, and law enforcement officials.

#### 1994

10 U.S.C. § 1034 expanded to extend protection to communications made to designated entities in the chain of command and disclosures regarding discrimination or sexual harassment.

#### 1998

10 U.S.C. § 1034 expanded to allow service IGs the authority to receive and expediously. investigate complaints.

#### 2003

DoD issued a directive type memorandum allowing service IGs to receive NAF complaints.

#### 2004

10 U.S.C. § 1034 changed to state that any member in the member's of the chain of command may receive a portected communication.

# **0804 Military Whistleblower Complaints**

# 0804.1 Who Can Receive a Complaint

As outlined in the charts on pages 6 through 9, various agencies have responsibility for investigating reprisal complaints depending upon the employee's status. DoD IG has responsibility for military members, non-appropriated fund employees, and contract employees. Both DoD IG and Service IGs can accept reprisal complaints made by military members under 10 U.S.C. § 1034.

In this chapter, we focus primarily on the procedures related to conducting a reprisal complaint from a military member since you will most likely conduct only this type of reprisal investigation.

Since DoD IG maintains oversight of all reprisal cases within DoD, Service IGs must notify DoD IG (Military Reprisal Investigation Division) within 10 days of receiving a reprisal complaint.

Field IGs should coordinate notification through the NAVINSGEN Hotline Division. If the complaint involves a senior official, notify the NAVINSGEN Special Inquires Division.

# 0804.2 IG's Role Upon Receipt of an Allegation of Reprisal

Upon receipt of a complaint of reprisal, you should:

- Determine the complainant's employee status, i.e., appropriated fund civilian, non appropriated fund instrumentality, military member, contractor;
- Refer the complainant to the appropriate agency. (If the complainant is currently or has previously sought a remedy using the appropriate agency, inform the complainant DoN IG organizations cannot intervene);
- Conduct a Preliminary Inquiry if you receive a complaint from a military member or you receive the complaint directly from NAVINSGEN.

#### **0805.1** APPROPRIATED FUND EMPLOYEES

Civil Service Reform Act (CSRA) as codified in 5 U.S.C. §§1213, 1214, 1221 and revised by Congress in 1989

Employees covered:

Civilian government employees except for non-career SES, Schedule C employees, certain intelligence agencies such as FBI and CIA, and non-appropriated fund employees.

Agency responsible for investigation:

The statute gives the Office of Special Counsel (OSC) special authority to investigate allegations of reprisal made by civilian government employees and to ensure that the DoN takes appropriate corrective action, if substantiated.

Website: www.osc.gov

Call:

(800) 572-2249 (202) 653-9125

Address:

Disclosure Unit U.S. Office of Special Counsel 1730 M Street N.W. Suite 201 Washington DC 20036-4505

# Filing a complaint:

The complainant has the option of filing a reprisal complaint with the Navy first but should be aware the Navy IG has limited authority. If the complainant decides to file a complaint with OSC after we have initiated an investigation, the Navy would terminate its investigation. To avoid undermining OSC's investigation and duplication of effort, the Navy will not conduct a concurrent investigation.

OSC regulations describing how to file a complaint of reprisal appear at 5 CFR 1800.

# 0805.2 Non-appropriated Fund (NAF) Employees

10 U.S.C. § 1587 Implemented by DoDD 1401.3 revised on 16 October 2001

"Employment Protection for Certain Non-appropriated Fund Instrumentality Employees/Applicants"

Website: www.dodig.osd.mil (Click on Hotlines then Reprisal Complaints)

Call: (800) 424-9098

Address: Defense Hotline The Pentagon Washington DC 20301-1900

Fax: (703) 604-8567

# Employees covered:

Civilian employees paid from nonappropriated funds, such as base exchanges, Morale, Welfare and Recreation employees, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

# Agency responsible for investigation:

DoDD 1401.3 assigns the DoD IG responsibility for the investigation of allegations of reprisal submitted by NAF employees.

#### Filing a complaint:

Complainants should file a complaint directly with DoD IG. However, Service IGs can receive a complaint and forward it to DoD IG.

#### 0805.3 MILITARY MEMBERS

10 U.S.C. § 1034 as amended by the FY95 Defense Authorization Act and implemented by DoDD 7050.6 dated 23 June 2000

"Military Whistleblower Protection Act"

Website:

www.dodig.osd.mil (Click on Hotlines then Reprisal Complaints)

Call:

(800) 424-9098

Mail:

Defense Hotline The Pentagon Washington DC 20301-1900

Fax:

(703) 604-8567

#### Employees covered:

Members of the Armed Forces of the United States.

#### Agency responsible for investigation:

DoD IG, Military Reprisal Investigations Division, has the primary authority and responsibility to conduct investigations concerning allegations of reprisal against military members. Since 1989, military members also have the option of complaining directly to their Service's Inspector General.

#### Filing a complaint:

The member may file with DoD IG or the DoN IG. If the member wants to file a complaint with DoD IG, offer assistance. If the 60-day filing period is about to expire, provide the DoD IG telephone number, address, website, fax number, or e-mail address to assist in filing a complaint.

#### **0805.4 DEFENSE CONTRACTORS**

#### 10 U.S.C. § 2409

#### Employees covered:

Contractor personnel who report suspected violations of law or regulations relating to defense contracts. DoN IG and other DoN offices have authority to receive these disclosures and to protect contractor personnel under the statutes. However, DoN IG organizations are not authorized to investigate such allegations.

# Agency responsible for investigation:

DoD IG has the responsibility for investigating these allegations.

#### Website:

www.dodig.osd.mil

(Click on Hotlines then Reprisal

Complaints)

Call:

(800) 424-9098

Mail:

Defense Hotline The Pentagon

Washington DC 20301-1900

Fax:

(703) 604-8567

# Filing a Complaint:

Advise the complainant to file the complaint with DoD IG and provide the hotline numbers and address.

#### 0806 Conducting a Preliminary Inquiry

Upon receiving a reprisal complaint from a military member, you will conduct a Preliminary Inquiry (Complaint Analysis) to determine whether the allegations merit investigation under 10 U.S.C. § 1034. If there is not sufficient evidence to determine whether or not reprisal occurred, Service IGs will open a full investigation.

Field office IG personnel who conduct reprisal investigations should forward the report to NAVINSGEN, to be forwarded to DoD IG for approval.

# 0807 Timeliness

The reprisal complaint must be submitted **within 60 days** of when the complainant first became aware of the adverse personnel action.

#### 0808 Notifying the Complainant

During the Preliminary Inquiry, contact the complainant to explain the purpose of the investigation and the process. You will also want to confirm and clarify the issues raised in the complaint. Ask the complainant to identify any documents or relevant witnesses that may assist in your investigation.

# 0809 Preparing a Chronology

Begin outlining the events based on the complainant's rendition of the facts to organize and help you "put the pieces of the puzzle together." A chronology will also help you better understand the timing of all of the actions which is critical to your analysis of whether the allegation of reprisal is substantiated.

# 0810 The Four Reprisal Questions

You are ready to begin gathering evidence. Whistleblower cases are like puzzles. The pieces must fit together in order to substantiate a reprisal allegation.

The tools you will use to gather evidence are the four questions listed below. Ask these questions to uncover the facts.

- Did the military member make or prepare a communication protected by statute?
- Following a protected communication, was an unfavorable personnel action taken or a favorable action withheld? Or was such action threatened?

- Before taking or threatening an adverse personnel action, did the management officials know about the protected communication?
- Does a preponderance of the evidence establish that the adverse personnel action would have been taken absent the protected communications?

These questions are used in analyzing all reprisal complaints filed by military members and may also be applied to other complaints of reprisal.

#### 0810.1 **Question 1**

Did the military member make or prepare a communication protected by statute?

#### **Protected Communication**

Your analysis must begin with an understanding of the term "protected communication" as it applies to whistleblower cases.

Protected communication falls into two categories, based on the recipient and the nature of the communication:

1. Any lawful communication made to Members of Congress and IGs.

A lawful communication to Congress and IGs does <u>not</u> have to disclose information concerning wrongdoing, i.e., it is protected regardless of its content.

- 2. Communication made to one of the following:
  - DoD audit, inspection, investigation, or law enforcement agencies;
  - People or organizations designated under Component regulations or established administrative procedures to receive such complaints; or,
  - Chain of command. (See SECNAVINST 5370.7B, para 6).

Communication to these entities is protected <u>only</u> if it concerns: violations of law or regulation (includes EO issues); gross mismanagement; abuse of authority; gross waste of funds or resources; or substantial danger to public health or safety.

A protected communication may be:

- Verbal, written or electronic (phone, fax, e-mail);

- Communications made by a third party (spouse, relative or co-worker) on behalf of complainant; or,
- Chain of command communications to include complaints made during commander's call, request mast, or under open door policy.

# **Sample Complaints** - Are They Protected Communications?

- Petty Officer Jones announced at a recent Commander's call that his supervisor discriminated against him because of his religious beliefs.
- Chief Kirk's commander believes she was the source of an anonymous call to the IG (however, Chief Kirk denies she ever contacted the IG).
- LT Traveler's mother wrote the Hotline complaining that her son would be deployed to Bahrain on her birthday and he would be unable to attend her birthday celebration.
- Seaman Sweettooth wrote to his Congressman complaining that the lunch line at the base dining facility was too long and by the time he got to the desserts, the pecan pie was always gone.

Analyze the validity of communication by asking yourself:

- To whom was it made?
- What was the protected communication?
- When was it made?

**What if...**you find no evidence of a protected communication?

- **or,** the allegation of wrongdoing was not substantiated?
- **or**, the protected communication was made in retaliation against management officials?

# 0810.2 Question 2

Following a protected communication, was an unfavorable personnel action taken or a favorable action withheld?

Was a threat made to take an unfavorable action or withhold a favorable action for making or preparing a protected communication?

# Adverse Personnel Action

A personnel action is any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career, and is discretionary in nature.

Examples of personnel actions include:

- Performance evaluations;
- Transfer or reassignment;
- Changes to duties or responsibilities;
- Disciplinary or other corrective actions;
- Denial of reenlistment or separation;
- Decisions concerning awards, promotions or training;
- Decisions concerning pay or benefits; or,
- Referrals for mental health evaluation.

Additional examples of personnel actions are revocation of:

- Access to classified material:
- Authorization to carry weapons;
- Flying status; or,
- Personnel Reliability Program certification

(Key: Was the action discretionary?)

# 0810.2 Question 2 (continued)

# Adverse Personnel Action (continued)

Investigations (fact finding tools) are not considered adverse actions. However, actions taken as a result of an investigation may be considered adverse action(s).

Would the following be examples of an Adverse Personnel Action?

- Commander Star claims his fitness report had strong grades; however the narrative portion did not contain the key "hard charging" words.
- Senior Chief Charger was scheduled to attend the Senior Enlisted Academy, but was "flagged" (i.e., prohibited from attending training) pending the outcome of an investigation. Senior Chief Charger was the subject of the investigation.

#### What if....

- Management did not consider the personnel action to be "adverse"?
- The personnel action was subsequently reversed?
- There was no personnel action?

#### 0810.3 **Question 3**

Before taking or threatening an adverse personnel action, did the management officials know about the protected communication?

# **Responsible Management Officials**

Before you can answer the question, you must first determine:

- Who is a responsible management official (RMO); and,
- If the RMO(s) had prior knowledge of the protected communication.

The complainant will more than likely identify the person(s) he/she feels is the responsible official; however, you must establish the person's role in the matter by gathering additional information. An RMO is someone who:

- Influenced or recommended the action be taken;
- Made the decision to take the action;
- Signed applicable correspondence regarding the action; or,
- Approved, reviewed, or endorsed the action.

Once you determine who was involved in any of the above actions, you will need to establish:

- When the responsible management official knew;
- What the responsible management official knew;
- How did responsible management official find out; and,
- If anyone else knows the official knew.

You may also need to determine when the RMO considered taking the action, initiated the action, and completed the action.

# 0810.3 Question 3 (continued)

# **Interviewing the Complainant**

The complainant will be able to provide the answers to many of your questions. Include these questions in your interview to elicit information about the responsible official:

- Who do you believe is responsible?
- Why do you believe they knew you made a protected communication before taking the adverse action?
- Who can testify/provide documents to support your allegation that the responsible official knew of your protected communication?

# **Interviewing Witnesses**

You will want to include witnesses in your quest for information regarding the responsible official's knowledge of the protected communication. Ask witnesses:

- What do you know about the complainant's protected communication, and when did you find out?
- Did you tell anyone else about the complainant's protected communications, and if so, when?
- Do you believe the responsible official knew about the protected communications before they took the adverse personnel action? Why?
- Who else might have information supporting your statement that the responsible official knew/did not know about the protected communication?

# 0810.3 Question 3 (continued)

# **Interviewing the Responsible Management Official**

Establish what the RMO knew personally. During the interview, ask the questions to obtain necessary information such as:

- Did you personally receive the protected communication?
- Did you hear rumors about the protected communication?
- Did you suspect or believe the complainant made a protected communication (even if not true)?

The RMO does not need to have precise knowledge of the content of the protected communication. Your primary focus should be determining whether or not the RMO was aware of the protected communication, regardless of the subject or content.

Additional questions you may want to ask each RMO are:

- When and how did you first become aware of the complainant's protected communication?
- When and how did you first come to believe or suspect the complainant may have made (or intended to make) a protected communication?

#### **Handling Conflicting Evidence**

You may encounter circumstances wherein the responsible official denies having any knowledge of the protected communication. You may also be unable to uncover documentary evidence to corroborate witnesses' testimony that the responsible official knew. If presented with this situation, weigh the evidence and answer this question based on available information.

**NOTE:** If there is any doubt or uncertainty whether a responsible official knew about the protected communication, give the complainant the benefit of the doubt and proceed.

# 0810.4 **Question 4**

Does a preponderance of the evidence establish that the adverse personnel action would have been taken absent the protected communication?

# Reprisal or Independent Basis for Personnel Action

The fourth and final step of the process is to determine whether or not the personnel action was reprisal or if the responsible official took the personnel action for another reason. It is important at this stage of your investigation to make sure you have all the evidence you will need to determine your answer to this question. Collect all evidence to include:

# **Documentary**

- Copy of the adverse personnel action.
- Service regulations and policies.
- Other relevant documents.

#### **Testimonial**

- Complainant.
- Responsible management officials (anyone who decided, directed, recommended or influenced the adverse personnel action).
- Other key witnesses.

# 0810.4 Question 4 (continued)

# Reprisal or Independent Basis for Personnel Action (continued)

Follow some basic interview guidelines to ensure you obtain all of the information you will need to decide whether or not reprisal occurred. Your goal is to collect documents and testimony to make a convincing argument in your report supported by credible evidence.

- Get the "big picture" from each witness.
- Ensure you get answers to all four reprisal questions from the Responsible Management Official (RMO).
- Ask the tough questions don't hedge or retreat.

If a witness gets annoyed or defensive during the interview, stop the interview, re-establish rapport, and then continue the interview.

Each of the following points should be discussed in your completion report. In your analysis of the adverse personnel action, consider the following **standards**:

- 1. Procedural correctness of the action;
- 2. Reasons the RMO(s) took the action;
- 3. Reasonableness of the action (Did the punishment fit the crime?);
- 4. Consistency of the action with past practice (Were previous problems handled in a similar way?); and,
- 5. Motive of responsible officials for taking the action.

# 0811 Reporting Requirements

Under 10 U.S.C. §1034 and DoD Directive 7050.6, the following investigation and report writing requirements are mandatory.

- The investigating official must be outside the immediate chain of command of both the military member (complainant) and the responsible management officials against whom the allegations were made.
- Service agencies must submit two copies of the report of investigation to DoD IG - one unredacted and one redacted for the complainant. The DoD IG must provide the complainant a copy of the report of the reprisal investigation within 30 days of completion. The copy released to the complainant will contain the maximum disclosure of information permitted under FOIA.
- The deadline for completion of the investigation is 180 days after receipt of the allegation. If not completed, DoD IG must notify the Under Secretary of Defense (Personnel and Readiness) and include the reasons for the delay and an expected date of completion.
- The report must stand-alone and include all relevant facts. In addition to the report, provide DoD IG with all supporting documentation. Before forwarding to DoD IG, ensure the report includes:
  - -- A thorough review of the facts and circumstances relevant to the allegation(s).
  - -- The relevant documents acquired during the investigation.
  - -- Summaries of interviews conducted.
  - -- Legal review.

The suggested format for the report is outlined in DoDD 7050.6. In the background section, briefly outline the facts leading to the adverse action. The background section should contain undisputed facts, not analysis.

Follow the background section with a brief, but thorough, summary of the evidence you acquired in response to Questions 1 through Question 3. Conclude with an in-depth analysis of the evidence you obtained related to each personnel action (Question 4), applying the five standards discussed on page 8-20.

# 0812 Improper Referral for Mental Health Evaluation

As mentioned earlier in this chapter, 10 U.S.C. §1034 prohibits referral for mental health evaluation in reprisal for a protected communication. Such allegations are handled as reprisal complaints.

This portion of the chapter will address allegations of improper referral of military members for mental health evaluation (MHE). Such allegations may involve procedural errors or omissions, denial of rights, or other non-compliance with applicable directives.

The DoD Directives listed below provide procedures for command directed MHE referrals and psychiatric hospitalization. They also direct the Services to develop policy and procedures to manage cases of service members who are believed to be imminently dangerous.

- DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997
- DoD Directive 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997

These directives do not cover:

- Self-referral for mental health services:
- Family Advocacy Program;
- Drug/alcohol rehabilitation programs;
- Responsibility and competency inquiries;
- Diagnostic referral by non-mental healthcare providers; and,
- Evaluations required by Service organizations.

# 0812.1 DoD IG's Responsibilities

It is the DoD IG's responsibility to conduct or oversee investigations of allegations of improper referral for MHEs.

DoD IG is also required to prepare a semiannual report to Congress. This report contains a synopsis of investigative activity related to improper referral for MHEs.

# 0812.2 NAVINSGEN Responsibilities

It is NAVINSGEN's responsibility to report allegations of improper referral for MHE to DoD IG within 10 working days. NAVINSGEN investigates these allegations in accordance with DoD and DoN directives and reports its investigative findings to DoD IG.

# 0812.3 Referral Types

The responsibility for determining whether or not referral for mental health evaluation should be made rests with the service member's Commanding Officer. The following page outlines actions for the Commanding Officer and mental healthcare provider, depending upon the type of referral.

A **non-emergency referral** is one that is considered routine. In such cases, the requirement to notify the service member of his or her rights when being referred for MHE shall take priority.

An **emergency referral** results from a situation where:

- A service member is threatening imminent harm to him/herself or others, by words or actions; or,
- A service member is threatening to destroy property under circumstances likely to lead to serious personal injury or death; and,
- Delay of the referral for MHE would further endanger the service member or others.

# 0812.4 Commanding Officer's Actions

Non-emergency MHE	Emergency MHE
Consult with a mental healthcare provider (MHCP) to discuss the member's actions and behaviors.	Try to consult with a MCHP or other privileged physician prior to referral.
	Safely transport member to the nearest MCHP or, if unavailable, a physician, as soon as practical.
At least two business days in advance, provide member with a referral memorandum including a statement of rights.	As soon as practical, provide member with a referral memorandum including a statement of rights.
Send the Commanding Officer of the Medical Treatment Facility (MTF) a memorandum formally requesting MHE.	If unable to consult with MCHP before transporting member, forward memo to MCHP as soon as practical.

# 0812.5 <u>Mental Healthcare Provider's Action</u>

- Prior to a non-emergency MHE, determine if the proper referral procedures were followed. If they were not, report the fact to the chain of command.
- Advise the member of the purpose, nature, and likely consequences of MHE <u>before</u> the evaluation is conducted.
- Advise the member that the MHE is not confidential.
- After completing the evaluation, forward a memorandum to the member's Commanding Officer regarding the results of the MHE and recommendations.

# 0812.6 Service Member's Rights

When referred for a mental health evaluation, a service member has certain rights. As outlined below, the member is entitled to:

- Be given <u>at least two business days</u> prior to the MHE, except in emergencies, to consult with an IG, attorney, chaplain, or other appropriate party;
- Be provided with a military or DoD civilian attorney, at no cost, to obtain advice regarding ways to seek redress (including, but not limited to, Article 138 of the UCMJ), if requested;
- Request an IG investigation; and,
- Seek a second medical opinion.

**NOTE:** No person may restrict the member from lawfully communicating with an IG, attorney, Member of Congress, or other person regarding the MHE referral. Such action would be punishable under Article 92 of the UCMJ.

# 0812.7 <u>Hospitalization for Psychiatric Evaluation/Treatment</u>

Depending upon the circumstances, a service member may require hospitalization for psychiatric evaluation and/or treatment.

A **voluntary admission** is appropriate if the MHCP determines one of the following.

- In-patient admission is clinically indicated.
- The member has the capacity to make an informed decision about treatment.
- The member voluntarily consents to be hospitalized.

An **involuntary admission** is appropriate only when the MCHP makes a reasoned, good faith clinical judgment that:

- The service member has, or likely has, a severe mental disorder and poses a danger to him/herself and/or others.
- The evaluation or treatment cannot reasonably be provided by a less restrictive level of care.

# 0812.8 <u>Service Member's Rights when Hospitalized Involuntarily</u>

When hospitalized involuntarily for psychiatric treatment, service members are afforded these additional rights:

- To be advised by the MCHP of the reason for admission and the likely consequences of the evaluation and any treatment;
- An evaluation within 24 hours of hospital admission;
- To contact a relative, friend, chaplain, attorney, and/or an IG as soon after admission as the member's condition permits; and,
- To have an independent review of the admission if the involuntary hospitalization is to continue beyond 72 hours.

In such cases, while the member retains the rights associated with referral for MHE, notification to the service member of those rights shall not take precedence over ensuring the service member's or other's safety. Notification of rights may be delayed until it is practical.

# 0812.9 Imminent Dangerousness

Prompted by past incidents of violence, the directives discussed on page 8-22 were revised to address the issue of imminently dangerous service members. Those directives require the Services to have procedures for immediate management of dangerous members. They also require Commanding Officers to be alert to potentially dangerous members and to take precautions to ensure the safety of the member and others. The directives also contain provisions for the evaluation and separation of a dangerous member.

# <u>Imminently Dangerous Service Member</u>

An individual at substantial risk of committing an act that would result in serious injury or death to him/herself or others; or of destroying property under circumstances likely to lead to serious personal injury or death. The individual must manifest the intent and ability to carry out that action.

# 0812.10 Clinical Evaluation and Recommendations

A privileged, <u>doctoral-level</u> MCHP must make a <u>clinical determination</u>, based on a comprehensive evaluation, that the member is imminently dangerous.

The MCHP must then advise the member's Commanding Officer within <u>one business day</u> after completing the MHE regarding the member's:

- Diagnosis, prognosis, precautions, and treatment plan;
- Fitness and suitability for continued service; and,
- Continuation in the service.

A member's Commanding Officer must co-sign a recommendation for separation from the service. The Commanding Officer must explain a decision to retain the member against medical advice to *his/her own* Commanding Officer within two business days.

# 0813 In Summary...

- Determine the complainant's employee status to refer reprisal allegations to the proper agency.
- Report allegations of reprisal against a military member or improper referral for MHE to DoD IG within 10 working days.
- For reprisal against a military member, answer "The Four Reprisal Questions."
- Include all relevant facts in your report and provide all supporting documentation.

Glossary of Terms			
Abuse/misuse of authority/ power/position	Abuse of authority/power/position is an arbitrary or capricious exercise of power by a military member, federal official or employee that injures or adversely affects the rights of a subordinate by tyrannical, careless or capricious conduct or continuous and/or severe abusive language or that results in personal gain or advantage to themselves. Misuse of position includes a wide range of subjects such as improper use of title/ position/rank (see Ethics). If the abuse of position involves discrimination; i.e., creates a hostile work environment, see Equal Opportunity.		
Abuse/misuse and/or theft of government property	Abusive, intentional or improper use of government resources. Examples include misuse of rank, position, or authority or misuse of resources such as tools, vehicles, credit cards or copying machines. Minor abuse of government property should be reported to your local command. Normally, reports of theft of government property are reported to the law enforcement authorities at the particular installation in question. The command or unit, military police, Defense police, and military criminal investigative organizations are responsible to investigate thefts and misappropriation of government property. NAVIG may, however, accept or refer certain reports of Government property theft dependent on the circumstances surrounding your knowledge of the offense in question. Minor abuses of time and attendance or misuse of government telephones, government credit cards, facsimile machines, equipment and vehicles should be reported to the command, military police unit, or local IG.		
Accountability	One of the four standards for conduct of IG investigations. Commanders, commanding officers, and supervisors must hold their subordinates accountable for their actions and to correct system faults. Any corrective action must be documented in the Investigative Report to meet this standard.		
Allegation	Statement offered for proof through an IG investigation. The investigator's job is to obtain evidence sufficient to sustain or refute the allegation.		

Allegations List (Investigative Plan component)	Identifies each alleged wrongdoing or impropriety and the applicable rule or regulation.		
Adverse Personnel Action	Any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career.		
Alternate Resolution Process	An avenue available to complainants where certain issues are more appropriately addressed than with the IG.		
Anonymous Complainant	A complainant who does not provide his/her identity when making a complaint to an IG.		
Article 31(b) UCMJ Warnings	Warnings for military members suspected of possible criminal misconduct advising them of certain rights, such as the right to remain silent and retain counsel.		
Background (Investigative Plan and Investigative Report component)	Explains how you received the allegations, i.e., from DoD, NAVINSGEN, or locally. It may also include other relevant information, such as information about the command or personnel involved, or about previous complaints regarding similar issues.		
Bookfiled	The maintenance of records for an allegation that is not significant enough to warrant an investigation but must be documented for record purposes.		
BCNR	Board for Correction of Naval Records		
gratuities	Giving, offering, promising, soliciting, demanding, receiving or accepting, directly or indirectly, with wrongful or dishonest intent, anything of value, to or by a public official, to influence an official act or public official to commit fraud or violate the law, or testimony as a public official, in return for being influenced, to perform such actions.		
	It is prohibited for any person to provide, attempt to provide, or offer to provide any kickback; to solicit, accept, or attempt to accept any kickback; or to include, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.		

Chronology of Events (Investigative Plan component)	Outlines the order in which events occurred.
Circumstantial Evidence	Circumstantial evidence is used to prove or disprove a fact through the (presumed) existence of a logical relationship between the evidence and the fact at issue. The logical relationship itself may be subject to question, usually must be explained, and sometimes leaves room for interpretation or controversy. Therefore, you must evaluate circumstantial evidence critically and attempt to corroborate it with other evidence.
CMEO	Command Managed Equal Opportunity
CMIS (Case Management Information System)	A means of managing records of IG investigations, normally through a database.
Complainant	A person presenting allegations that trigger a decision to conduct an IG investigation.
Completeness	One of the four standards for conduct of IG investigations. Investigators must address all allegations, state the applicable rules and regulations and apply them to the facts, and provide a thorough analysis of how they reached their conclusions.
Confidentiality	A trust in the interviewer's discretion to protect the interviewee's identity. Confidentiality may be necessary to protect an interviewee from reprisal or to ensure full disclosure of information. However, absolute confidentiality cannot be guaranteed.
Contact list (Investigative Plan component)	Identifies each person the investigator intends to contact in connection with the allegation to be investigated.

Convening authority	A commissioned officer that is authorized to convene a court-martial to try a person subject to the Uniform Code of Military Justice (UCMJ). Only general court-martial convening authorities are authorized to grant formal immunity from prosecution under the UCMJ.
Corrective action	Action taken to "fix the system" to minimize the likelihood undesirable activity identified during an IG investigation will reoccur. Individual disciplinary action, establishment or augmentation of procedures, checks and balances, and training are typical corrective responses.
Court-Martial	The exercise of military jurisdiction over criminal offenses as prescribed by law and regulation. There are three types of courts-martial: general (GCM), empowered to impose any sentence prescribed by law, including death; special (SPCM), empowered to impose lesser punishment, including not more than six months confinement; and summary (SCM), which may impose limited punishment, including not more than 30 days confinement. Conviction by a general or special court-martial creates a Federal criminal record. Conviction by a summary court-martial creates only an administrative record.
Criminal prosecution	Process by which persons charged with violating criminal provisions of the United States Code (including the UCMJ) or state law are tried for their alleged offenses in a United States district court, a state court, or a general or special court-martial.
Custodial setting	Interviewee has reason to believe his/her freedom or action has been deprived in a significant way.
Declaration	A written statement summarizing testimony given during an interview, signed by the interviewee declaring under penalty of perjury that their statement is true and correct. A form of sworn testimony.

Direct evidence	Direct evidence tends to prove or disprove a fact through the first-hand knowledge or observation of a witness, through the text, pictures, or graphics of a document, or through the existence and characteristics of a physical object.			
Disciplinary action	A form of corrective action, short of criminal prosecution, taken against a person found to have engaged in wrongdoing. Examples include reprimand and other non-judicial punishment, suspension; demotion or reduction in rank; and summary court-marital. Counseling, training or a performance-based action are not considered disciplinary in nature.			
Document List (Investigative Plan component)	Identifies the documents needed for the investigation and acts as a checklist.			
DoDIG	Inspector General of the Department of Defense			
DON	Department of the Navy			
Ethics	Ethics violations involve a wide range of subjects, to include:  Communications (significant allegations including government owned telephones, facsimile machines, electronic mail, internet systems, and commercial systems)  Conflicts of Interest Employee self disqualification for reasons of financial interest, impartiality or matters effecting prospective employers  Employment and Business Activities; Prior Approval for, Negotiating, Accepting, Discussing, Post Government, etc.  Endorsements Financial and Employment Disclosure Fundraising and Membership Drives and other activities Gambling Government Resources; use of, acceptance of Incidental Benefits (e.g. frequent flyer mileage, airlines, rental car companies and hotel credits)  Gifts Military Title; use of Political Activities Soliciting Sales			

	Official Participation in Non-Federal Entities Others (including personnel, equipment, and property)			
Free narrative question	Type of question that elicits an orderly, continuous account of an event or incident without prompting.			
EEOC	Equal Employment Opportunity Commission			
FOIA	Freedom of Information Act			
Fraud	Any intentional deception designed to unlawfully deprive the United States of something of value or to secure for an individual from the United States a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include, but are not limited to: the offer, payment, or acceptance of bribes or gratuities; making false statements; submitting false claims; using false weights or measures; evading or corrupting inspectors or other officials; deceit either by suppressing the truth or misrepresenting material fact; adulterating or substituting materials; falsifying records and books of accounts; arranging for secret profits, kickbacks, or commissions; and conspiring to use any of these devices. The term also includes conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.			
GCM	General court-martial			
Hearsay evidence	A form of circumstantial evidence, which is related to the investigator by a third-party as the truth. Hearsay may be used in your investigation; however, you should try to corroborate hearsay by interviewing others who may have more direct, or first-hand, knowledge of the facts in question.			
IG	Inspector General			
Imminently dangerous service member	Term used when evaluating a situation for possible referral for a Mental Health Examination. Describes an individual at substantial risk of committing an act that would result in serious injury or death to him/herself or others; or of destroying property under circumstances likely to lead to serious personal injury or death. The individual must manifest the intent and ability to carry out that action.			

Immunity	Circumstances in which the Government agrees not to prosecute an individual in consideration for his/her testimony as a witness in an investigation. The two types of immunity are "use" and "transactional".				
Independence	One of the four standards for conduct of IG investigations. For this standard to be met, the individuals and organizations conducting an IG investigation must be free, in fact and appearance, from any impairment of objectivity and partiality.				
Inquiry	General term used to refer to any form of examination into a matter, including inspections, investigations, area visits and surveys, but not including audits. Compare to "preliminary inquiry" defined below.				
Interview Plan	A tool used to prepare for an interview which outlines the objective or purpose, and takes into account such factors as the type of witness, questioning techniques, etc.				
Investigative Plan	A written outline of how you intend to carry out the investigation. It serves as a checklist to ensure that all necessary points are covered.				
Investigative Report	Used to document whether the allegations investigated were or were not substantiated. Provides responsible authority information to assist in making a decision whether or not to take corrective action.				
Mental Health Evaluations (MHE)	Generally, an MHE is a clinical assessment of a service member for a mental, physical, or personality disorder to determine the member's clinical mental health status and and/or fitness and/or suitability for Service. This definition does not apply to voluntary self-referrals; diagnostic referrals requested by non-mental health care providers not part of the service member's chain of command as a matter of independent clinical judgment and when the service member consents to the evaluation; responsibility and competency inquiries conducted under the Rule for Court Martial of the Manual for Courts-Martial; interviews conducted under the Family Advocacy Program; interviews conducted under drug or alcohol abuse rehabilitation programs; and evaluations expressly required by the Navy for special duties or occupational classifications				

Mismanagement	A collective term covering, generally, acts of abuse and waste. Needless, extravagant and careless expenditure of government funds or the consumption or misuse of government property or resources, resulting from poor management/supervision, deficient practices, systems, controls, or decisions.			
MSPB	Merit System Protection Board			
NAVINSGEN	The Office of the Naval Inspector General			
NCIS	Naval Criminal Investigative Service			
NDRB	Naval Discharge Review Board			
NJP	Non-judicial punishment			
PA	Privacy Act			
Preliminary Inquiry	The initial phase of an IG investigation used to gather information about the complaint to determine if a full investigation is warranted.			
Principal Investigation	The main phase of an IG investigation.			
Procurement fraud	Procurement fraud includes cost/labor mischarging, defective pricing, defective parts, price fixing and bid rigging, and product substitution.			
	Cost/labor mischarging. Schemes by contractors on cost- type contracts to fraudulently inflate the cost of labor or materials.			
	Defective pricing. Occurs when a contractor does not submit or disclose to the government cost or pricing data that is accurate, complete, and current prior to reaching a price agreement.			
	Defective parts. A defect in design, specification, material, manufacturing and workmanship, which may cause death, injury or severe occupational illness; would cause loss of major or minor capabilities of the using organization or which would result in a production line stoppage.  Price fixing and bid rigging.			

	Price fixing and bid-rigging is an agreement where, in response to a call or request for bids or tenders, one or more bidders agree not to submit a bid, or two or more bidders agree to submit bids that have been prearranged among themselves. Bid rigging is any activity to suppress and eliminate competition on contracts funded by the United States that reasonably restricts trade and commerce in violation of the Sherman Act, which is subject to a five-year statute of limitations.
	Product substitution. The introduction of counterfeit and/or substandard material and other forms of unauthorized product substitution into the procurement system. An area of increased emphasis is readiness enhancement through vigorous detection and investigation of defective or substituted products that involve military readiness.
	Spare parts overpricing. Navy IG will either accept a complaint of overpriced spare parts or we will refer you to the appropriate Defense Logistics Agency (DLA) supply center, dependent on the spare part in question.
Reprisal	Retaliation against an individual who discloses wrongdoing. Specific criteria to determine if an allegation constitutes reprisal vary according to the status of the complainant.
Responsible Authorities	People who have authority and responsibility to take corrective, remedial, or disciplinary action based on the findings of an IG investigation.
Results of Interview	"Memorandum of Interview" is a written record of what was said and what occurred during an interview, derived from notes and memory of the interviewer.
SECNAV	Secretary of the Navy
Senior Officials	Allegations of serious misconduct by senior officials of the Department of the Navy to include military officers selected for flag rank and civilians selected for executive service. Allegations include a violation of: criminal law, including the Uniform Code of Military Justice; standards of conduct and government ethics; abuse of authority, statutory post-Government service restriction; or a matter not included above that can reasonably be expected to be of significance to the Secretary of Defense, Secretary of the Navy, the Chief of naval Operations (CNO), the Commandant of the Marine Corps, IG, DOD, or the Naval

	Inspector General.			
Statement	An oral or written account of an event.			
Standards for Conduct of an IG Investigation	Investigators should conduct IG investigations in an independent, complete and timely manner. Where appropriate, provide sufficient information to permit responsible authorities to correct systemic faults, to take corrective action, and to hold subordinates accountable for their actions.			
Standard of Proof	The degree of certainty necessary to decide that an allegation should be sustained when all of the credible evidence, pro and con, is weighed together. For IG investigations, the standard of proof is "preponderance the credible evidence," meaning that it is "more likely that not" that an event occurred.			
Statements Against Interests	When a witness makes admissions that are detrimental to their own interests.			
Subject Commands	Those organizations in which wrongdoing is alleged to have occurred.			
Subjects	People against whom allegations of wrongdoing have been made.			
Suspects	People against whom sufficient evidence exists to create reasonable doubt that they engaged in criminal misconduct.			
Systemic problems	Any rule, regulation, policy, procedure, system, equipment, part, machinery, supplies or other government apparatus affecting readiness, efficiency, safety and operation of the entire system such as: defective aircraft, ship or weapons parts; inadequate maintenance procedures; deficient safety instructions, etc.			
Timeliness	One of the four standards for conduct of IG investigations. Investigators will initiate, conduct, and complete an investigation within the established due dates, generally within 90 days of receipt of the complaint. Any corrective action must also be completed in a timely manner, generally within 30 days of the completion of the investigation.			
UCMJ	Uniformed Code of Military Justice			

U.S.C. (United States Code)	A compilation of US law.
Waste	The extravagant, careless or needless expenditure of government funds or the consumption of government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.
Whistleblowers	Those people who disclose information they reasonably believe is evidence of a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety.
Witnesses	Those people selected for interviews during an IG investigation because they have information that supports or refutes an allegation.
Wrongdoing	Generic term for activity that may be the subject of an IG investigation and includes misconduct, improper misconduct, and inappropriate misconduct.

# **Sample Case File**

# Sample Tasking Letter DoD Hotline

5041/20030435 Ser N6x/179 8 June 03

From: Naval Inspector General

To: Commander, Naval Air Systems Command (AIR-00G)

Subj: DOD HOTLINE COMPLAINT 72033 (20030435)

Ref: (a) SECNAVINST 5370.5A

(b) NAVINSGEN Investigations Manual (July 1995)

Encl: (1) Subject Hotline Complaint

- 1. Per reference (a), please inquire into the allegations contained in enclosures (1) and (2) and provide a hotline completion report by 16 September 2003. Reference the DoD and Naval Inspector General hotline complaint number in all correspondence.
- 2. Your investigation must address all allegations identified in the enclosures. You must also address additional allegations that may emerge during the investigation. Ensure due consideration is given to independence, completeness, timeliness, and accountability. Refer to reference (b) for the conduct of the investigation.
- 3. Your point of contact is Ms. Investigator, commercial (203) 433-xxxx (DSN: 288). We appreciate your support in this matter.

# **Sample Complaint**

May 17, 2003

To Whom It May Concern:

I called the DOD hotline earlier today and spoke with one of your investigators. He told me to write a letter. I want to report travel fraud abuse at my command, COMNAVAIRSYSCOM.

In March, Marie Powell, Paula Collins and Sylvia Chase, all employees at PMA 277, were sent to a conference in San Diego. The trip looked like a boondoggle to others and me. I don't know why they had to go, but they left on 1 March and came back on Thursday. I strongly doubt that they did much while they were away. I have it on good authority that Sylvia Chase didn't even attend the afternoon session of the Wednesday conference and did not go at all on Thursday. Sylvia also returned to Reagan-National Airport instead of Dulles, which costs a lot more. She claimed the extra amount on her travel claim instead of paying for it herself.

Someone needs to do something about this.

A concerned taxpayer.

Enclosure (1)

# Sample Investigative Plan

DOD HOTLINE # 72033 NAVY HOTLINE # 20030435 NAVAIR CASE # H02-034 23 Jan 2003

### 1. ALLEGATIONS/ISSUES

a. SOURCE OF ALLEGATIONS: Anonymous DoD IG complainant.

### **b. ALLEGATIONS LIST:**

- (1) That Ms. Sylvia Chase improperly abused her official time by not attending a working group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2 § 2635.705, Use of Official Time.
- (2) That Ms. Sylvia Chase returned from San Diego to Reagan-National Airport vice Dulles Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of the Joint Travel Regulations (JTR), Chapter 2, § C2001A, Transportation Modes, Accommodations, Transportation Requests, Baggage and Mileage Rates.

# 2. BACKGROUND

### a. RELEVANT STATUTES/DIRECTIVES/REGULATIONS/POLICIES:

	0,	···
Rule/Regulation	Topic	Elements of Proof
JER 2635.705	Use of official time	An employee shall use official time in an honest effort to perform official duties Was employee on official time? Did employee use time for official duties?
2 JTR C2001 A.2.a	Selecting Method of Travel to Be Used	Use of contract air service vice non-contract.
2 JTR C2001 A.2.b	Noncontract Air Service	Advance authorization Authorization based on extenuating circumstances.
2 JTR C2001 A.3.d.	Circuitous travel	Employee responsible for excess cost due to unnecessary circuitous travel

**b. PREVIOUS INVESTIGATIONS**: A search of NAVAIR records found no previous substantiated allegations against the subject, Ms. Sylvia Chase.

## c. Origin of the Complaint.

DoD Hotline # 72033 – DoD received the complaint on 10 May 2003 and tasked NAVINSGEN on 30 May 2003

NAVINSGEN # 20030435 – NAVINSGEN received DoD complaint # 72033 on 4 June 2003 and tasked COMNAVAIRSYSCOM on 8 June 2003

NAVAIRSYSCOM Case # H02-034 – NAVAIRSYSCOM received the NAVINSGEN tasking letter and complaint on 12 June 2003 and tasked to the IO on 20 June 2003

# 3. **EVIDENCE**:

# DOCUMENT LIST:

a. DOCUI	WENT LIST:		
DOCUMENT	LOCATION	DATE OBTAINED	COMMENTS
Travel orders (Chase)	PSD	6/25/02	#67895
Travel claim (Chase)	PSD/DFAS	6/25/02	
C4I Summit Schedule and Agenda	SPAWAR	6/27/02	Emailed
Listing of Summit attendees	SPAWAR	6/27/02	Emailed

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b. INTERVIEW	/ LIST				
Name	Command/Position	Phone	Category	Date Interviewed	Comments
Sylvia Chase	NAVAIR, Deputy Program Manager, PMA 277	757-2209	Subject	7/13/03	Interview last. Provided name and phone number for friend (lunch).
Paula Collins	NAVAIR, Level II Team Leader, PMA 277	757-4430	Subject	7/12/03	
Marie Powell	NAVAIR, Program Analyst, PMA 277	757-1991	Subject	7/12/03	
Taylor Rutkowski	NAVAIR, Program Manager, PMA 277	757-2903	Witness	6/23/03	Provided C4I Summit Chairperson name and number.
Lisa Ponds	SATO, NAS Pax River	342-1060	Witness	6/21/03	Handles NAVAIR .
Randall Lopez	SPAWAR, Deputy Program Manager, PMW 170	(619) 524-6709	Witness	6/27/03	Provided conference attendance list and schedule. Suggested interview Joyce Cranston.
Joyce Cranston	SPAWARSYSCEN Charleston, Code 52	(843) 218-9665	Witness	6/29/03	
Toti Papas	NAVSEA, PMS 609	(703) 602-5499	Witness	7/2/03	Saw Ms. Chase at Rio Grande on 3 March 03
Armandina Sanchez	NAVSEA, PMS 609	(703) 602-2112	Witness	7/2/03	Friend of Toti Papas
Roy Martin	Civilian, non- government	(619) 447-7866	Witness	7/13/03	Friend of Chase. Declined to be interviewed – non-government, cannot be compelled.

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DRDER 1	Ponds Rutkowski	Witness	1, 2	QUESTIONS
1		Witness	1.2	
		Witness	1.0	
2	Dutkowaki		1, 2	What rules apply to changes to contract flights? Who is responsible for extra charges due to flight changes?
	Kutkowski	Witness	1	Who requested to attend conference? Who approved? Any specific guidance given to employees attending conference? Stated purpose of attendance? What does he know about Chase whereabouts on March? Who else might know if Chase present at working group?
3	Lopez	Witness	1	Can he provide schedule and attendance information? People required to sign in? What does he know about Chase whereabouts on March? Who else might know if Chase on panel during working group on afternoon of 3 March 2003?
4	Cranston	Witness	1	What does she know about Chase's whereabouts on 3 March? Who else might know about whereabouts?
5	Papas	Witness	1	What does she know about Chase's whereabouts on 3 and 4 March? Who else might know about whereabouts?
6	Sanchez	Witness	1	What does she know about Chase's whereabouts on the afternoon of 3 March and all day on 4 March 2003? Who else might know about whereabouts?
7	Powell	Subject	1	What does she know about Chase's whereabouts on the afternoon of 3 March and all day on 4 March 2003?
8	Collins	Subject/Witne ss	1	What does she know about Chase's whereabouts on the afternoon of 3 March and all day on 4 March 2003?Who else might know about whereabouts?
9	Chase	Subject	1, 2	Ask about return itinerary, interpretation of rules. Aware of circuitous travel rule? Whereabouts on 3 March? Who else can confirm? What time left restaurant? What time arrived conference center?
10	Martin	Witness	1	What time did Chase leave restaurant?

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- d. PHYSICAL EVIDENCE: None.
- 4. ADMINISTRATIVE MATTERS
- **a. ITINERARY:** NAVSEA (Crystal City) on 7/1/03 need to submit local travel claim for mileage.
  - **b. EXPECTED COMPLETION DATE:** 16 August 2003
- **c. NOTIFICATIONS:** Need to notify front office that will be investigating/interviewing. (Notified 6/20/03)
- 5. Other items
  - (1) Government Travel Card(s)
  - (2) Tape recorder, blank tapes, batteries
  - (3) Portable computer, floppy diskettes, electrical extension cord
  - (4) Credentials
  - (5) Copy of investigative plan
  - (6) Xerox copies of statements/allegations
  - (7) Maps
  - (8) IG Organizational chart
  - (9) Copy of Command Organizational chart
  - (10) Passport?
  - (11) Area Clearance?
  - (12) Hotel/car/airline reservations
  - (13) Place to conduct interviews
  - (14) Admin assistance?
  - (15) Transcribers?

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# **Sample Command In-Briefing Notes**

(Sample Handout for Commander, CO, XO, OINC, etc.)

### What to tell your officers/chiefs/supervisors, etc.:

- We are from the COMNAVAIRSYSCOM Inspector General's office and are here to investigate a hotline complaint.
- We anticipate conducting interviews for about 3-4 days and will primarily limit our discussions to (military and/or civilians). At this time, we do not anticipate questioning (officers and/or enlisted personnel and/or civilians).
- We are not, and neither should you be, interested in determining or knowing the identity or motive of the complainant. As a reminder, complainants are protected from reprisal under 5 U.S.C. 2302b8 and 10 U.S.C. 1034, the civilian and military Whistleblower Protection Acts.
- We are here on behalf of the Commander, Naval Air Systems Command. We understand investigations are intrusive and disruptive, but we will complete the interviews as soon as possible.
- As in any IG investigation, we have access to all persons, files, records, notes, etc. in accordance with SECNAVINST. We will arrange our own interviews. When you brief command personnel, please inform them that if they are contacted for an interview, they should cooperate with investigators. Additionally, they should be told not to discuss information about the interview with others without our permission. Also, no one should infer anything if called for an interview. We will be interviewing numerous people to gather background information. Interviewees may or may not be questioned about the allegations in the complaint.

# **Sample Command Out-Briefing Notes**

(Sample Handout for Commander, CO, XO, OINC, etc.)

What to tell your officers/chiefs/supervisors, etc.:

We completed this portion of the inquiry and are departing. If we determine more interviews are required, we will contact you.

We have not made any findings in this case since we have not completed all of our interviews or reviewed all of the documents. We anticipate completing the investigative portion in 2-3 weeks at which time we will begin writing the report.

After we submit the report, the IG and, possibly, staff legal will review it. Once the report is approved, the tasking authority will discuss the findings with you and/or forward you a copy for comment-action. Once the tasking authority closes the case, the report is releasable under FOIA and the Privacy Act.

We remind you not to discuss the case with anyone.

# **Interviewee Briefing Guides**

<u>Title</u>		<u>Page</u>
Complainant Interview Guide		B11- B12
Witness Interview Guide		B13- B15
Complainant & Witness Re-Interview	Guide	B16
Subject Interview Guide		B17- B19
Subject Re-Interview Guide		B20
Suspect Interview Guide		B21- B23
Suspect Re-interview Guide		B24
Interviewee Closing Notes		B25

### **COMPLAINANT INTERVIEW GUIDE**

**Have ready**: Privacy Act Statement

List of documents from interviewee (complaint letter, etc.)

Investigative Plan List of allegations List of questions

Copies of all documents you plan to show to the complainant

## Establish Rapport.

- Identify yourself and show ID or Appointing Letter.

- I/we are here as investigators on behalf of (command) to gather information concerning a hotline complaint. When our investigation is complete, we will file a report.
- We act as impartial fact finders. Our job is to collect and examine all pertinent information and then make an impartial presentation.
- This is an administrative proceeding. We have no authority to impose punishment or to direct any corrective action. Our goal is to establish the truth of allegations or establish that allegations are not true and therefore clear a person's good name.

### General Brief.

- Access to the information we gather is restricted to persons with a need to know to perform their official duties; usually investigators, attorneys, etc.
- Management officials may also see the report, but only if corrective action is required. If a commander or management official elects to pursue disciplinary action, then the subject has the right to all evidence, including your statement. Accordingly, under such circumstances, your identity will be known by the subject. Therefore, we cannot guarantee absolute confidentiality. Other than those types of circumstances, we protect your privacy and identity.
- Also, under FOIA & the PA, individuals may request and may be given redacted copies of your statement. That is, they may be given your statement, but identifying information such as your name, address, title, etc., will be omitted.
- As a reminder, all military and federal employees are required to cooperate with official investigations and to answer questions truthfully. So I would like to remind you of the importance of presenting truthful and candid statements. And, I would like you to give me information I need to know, even if I don't ask a specific question.
- I can accept hearsay evidence and opinion from you, but please identify information of that nature when you relate it to me.

For the purpose of this interview, hearsay is information you give me that is based on what others have told you, rather than what you know personally.

Opinions are your thoughts and beliefs about facts you know personally or have heard from others. The conclusions you draw from facts are a form of opinion evidence.

- Also, with respect to making a statement, you are protected from retaliation by the Whistleblower Protection Act.
  - Please advise me if your statement contains classified information.

**Privacy Act** - Before we begin, I want to discuss and have you sign a Privacy Act statement. Since I will be asking you to furnish personal information about yourself, the Privacy Act of 1974 requires that I inform you of the authority for this requirement (hand statement to interviewee, explain and have them read and sign).

## **Tape Recording**

- Our interviews are tape recorded for accuracy. But before I turn on the recorder, I want to ask if you have any questions.

- I want to record some information that will aide me in preparing an accurate transcript.

			·
Your name:			Title
Your command:			Rank/Grade
Your phone number:		Email	
I will turn on the tape recorde	er, record some infor	mation and ther	n place you under oath.
- The tape recorder is on. M	y name is	, ass	signed as an
investigator for	I am here with	my colleague	
T	he date is and	d time is	This is NAVIG
case number (and loc	al number).	I am interviewir	ng (name, grade,
command)			<del>.</del>
- Please state your name.			

- I will now administer the oath. Please raise your right hand. "Do you swear or affirm that the information you will give is true and correct to the best of your knowledge and belief."
  - Do you acknowledge that you are being tape-recorded?

## **Question the Complainant**

Note: If you show documents, number them and attach them to the ROI, Sworn Statement, etc.

- May we identify you as the complainant in this case?
- (**confidential complainants only**) You have two options when you request your identity to remain confidential: 1) You may release your identity to the IG (that's me) with the understanding that it will not be released to the investigator, or 2) you may identify yourself with the understanding that only the IG <u>and</u> the investigator will know who you are. Which would you like?
- How did you learn about this violation? Who is the subject and why? What is the rule/policy that you think was violated and why?
- Have you submitted this complaint to your command or supervisor? If so, who? When? Was any action taken?
  - Have you submitted this complaint to any other agency, your congressman, the Secretary, etc.?

### WITNESS INTERVIEW GUIDE

Have ready: Privacy Act Statement

List of documents from interviewee (complaint letter, etc.)

Investigative Plan List of allegations List of questions

Copies of all documents you plan to show to the witness

### Establish Rapport.

- Identify yourself and show ID or Appointing Letter.

- First, you are not suspected of any wrongdoing and are not the subject of the investigation.
- We were given your name as a witness since someone thought you might be able to help us.
- I/we are here as investigators on behalf of (command) to gather information concerning a hotline complaint. When our investigation is complete, we will file a report.
- We act as impartial fact finders. Our job is to collect and examine all pertinent information and then make an impartial presentation.
- This is an administrative proceeding. We have no authority to impose punishment or to direct any corrective action. Our goal is to establish the truth of allegations or establish that allegations are not true and therefore clear a person's good name.

#### General Brief.

- Access to the information we gather is restricted to persons with a need to know to perform their official duties; usually investigators, attorneys, etc.
- Management officials may also see the report, but only if corrective action is required. If a commander or management official elects to pursue disciplinary action, then the subject has the right to all evidence, including your statement. Accordingly, under such circumstances, your identity will be known by the subject. Therefore, we cannot guarantee absolute confidentiality. Other than those types of circumstances, we protect your privacy and identity.
- Also, under FOIA & the PA, individuals may request and may be given redacted copies of your statement. That is, they may be given your statement, but identifying information such as your name, address, title, etc., will be omitted.
- As a reminder, all military and federal employees are required to cooperate with official investigations and to answer questions truthfully. So I would like to remind you of the importance of presenting truthful and candid statements. And, I would like you to give me information I need to know, even if I don't ask a specific question.
- I can accept hearsay evidence and opinion from you, but please identify information of that nature when you relate it to me.

For the purpose of this interview, hearsay is information you give me that is based on what others have told you, rather than what you know personally.

Opinions are your thoughts and beliefs about facts you know personally or have heard from others. The conclusions you draw from facts are a form of opinion evidence.

- Please advise me if your statement contains classified information.

# **Privacy Act**

- Before we begin, I want to discuss and have you sign a Privacy Act statement. Since I will be asking you to furnish personal information about yourself, the Privacy Act of 1974 requires that I inform you of the authority for this requirement (hand statement to interviewee, explain and have them read & sign).

### **Tape Recording**

- Our interviews are tape recorded for accuracy. But before I turn on the recorder, I want to ask if you have any questions.
  - I want to record some information that will aide me in preparing an accurate transcript.

Your name:			Title
Your command:			Rank/Grade
Your phone number:		Email	
I will turn on the tape recorde	er, record some in	nformation and then	place you under oath.
- The tape recorder is on	ı. My name is	,	assigned as an
investigator for	I am he	ere with my colleagu	ue
	The date is	and time is	This is NAVIG
case number (and	d local number _	). I am intervi	ewing (name, grade,
command)			

- I will now administer the oath. Please raise your right hand. "Do you swear or affirm that the information you will give is true and correct to the best of your knowledge and belief."
  - Do you acknowledge that you are being tape-recorded?
  - Please state your name and command.

#### **Question the Witness**

Note: If you show documents, number them and attach them to the ROI, Sworn Statement, etc.

# **Criminal Involvement and False Statements**

- (<u>Witness Criminal Involvement</u>). If during this interview, the witness suggests personal criminal involvement, the witness must be advised of his/her rights. Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise the witness that he/she need not make any statement that may incriminate them.
- (<u>Witness False Statement Warning</u>). If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

**Military Personnel** <u>subject to UCMJ</u>. I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of the UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct. Do you understand?

**Military and civilian personnel** <u>not subject to UCMJ</u>. I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code. Do you understand?

# **COMPLAINANT & WITNESS RE-INTERVIEW GUIDE**

## Introduction

- Start recorder. The time is This tape recorded re-interview is being conducted on (date) at (location) The persons present are the complainant/witness (name) and (state others present)
- This is a continuation of an interview conducted on (date) as part of DoD/Navy Hotline Investigation, local # concerning (subject)
- You were previously advised of the role of an inspector general, of restrictions on the use of release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?
- (witness only) You were also informed that you are not the subject of the investigation.
- During the previous interview, you were put under oath before giving testimony. You are reminded that you are still under oath and it is a violation of Federal law to knowingly make a false statement under oath.

# **Question the Witness**

### **SUBJECT INTERVIEW GUIDE**

Have ready: Privacy Act Statement

List of documents from interviewee (complaint letter, etc.)

Investigative Plan List of allegations List of questions

Copies of all documents you plan to show to the subject

## Establish Rapport.

- Identify yourself and show ID or Appointing Letter as required.

- I/we are here as investigators on behalf of (command) to gather information concerning a hotline complaint. When our investigation is complete, we will file a report.
- We act as impartial fact finders. Our job is to collect and examine all pertinent information and then make an impartial presentation.
- This is an administrative proceeding. We have no authority to impose punishment or to direct any corrective action. Our goal is to establish the truth of allegations or establish that allegations are not true and therefore clear a person's good name.

### General Brief.

- Access to the information we gather is restricted to persons with a need to know to perform their official duties; usually investigators, attorneys, etc. However, management officials may also see the report, but only if corrective action is required. Therefore, we cannot guarantee absolute confidentiality. Other than those types of circumstances, we protect your privacy and identity.
- Also, under FOIA & the PA, individuals may request and may be given redacted copies of your statement. That is, they may be given your statement, but identifying information such as your name, address, title, etc., will be omitted.
- As a reminder, all military and federal employees are required to cooperate with official investigations and to answer questions truthfully. So I would like to remind you of the importance of presenting truthful and candid statements. And, I would like you to give me information I need to know, even if I don't ask a specific question.
- <u>Military Subject</u>. Although you are not suspected of a criminal offense, we have information that may be unfavorable to you. We are required to give you the opportunity to comment on these matters. However, you do not have to answer any question that may tend to incriminate you. The information is that: (advise subject of general nature of all allegations against him/her).
- Non-military Subject: [Bargaining Unit Members only: Civilian employees who are members of a collective bargaining unit (i.e. a union) may have the right to union representation when interviewed during an investigation. Additionally, bargaining unit employees may seek counsel with a union representative after an IG investigation interview. The IO should consult with the IG and Judge Advocate to clarify the specifications of the respective local bargaining agreement that may apply to each given investigation.]

Although you are not suspected of a criminal offense, we have information that may be unfavorable to you. We are required to give you the opportunity to comment on these matters. However, you do not have to answer any question that may tend to incriminate you. The information is that: (advise subject of general nature of all allegations against him/her).

- Please advise me if your statement contains classified information.

# **Privacy Act**

- Before we begin, I want to discuss and have you sign a Privacy Act statement. Since I will be asking you to furnish personal information about yourself, the Privacy Act of 1974 requires that I inform you of the authority for this requirement (hand statement to interviewee, explain and have them sign).

### **Tape Recording**

- Our interviews are tape recorded for accuracy. But before I turn on the recorder, I want to ask if you have any questions.
- I also want to record some information that will aide me in preparing an accurate transcript.

Your name:			Title
Your command:			Rank/Grade
Your phone number:	E	Email	
- I will turn on the tape re	ecorder, record some informa	ation and then	place you under oath.
- The tape recorder is or	. My name is, a	ssigned as an	investigator for
I am here with n	ny collegue	. The date is _	and time is
This is NAVIG case	number (and local nu	mber).	. I am
interviewing (name, grade, c	ommand)		

- I will now administer the oath. Please raise your right hand. "Do you swear or affirm that the information you will give is true and correct to the best of your knowledge and belief."
  - Do you acknowledge that you are being tape recorded?
  - Please state your name and command.
- I will first discuss the allegation(s) with you and then provide you an opportunity to comment on these matters.

#### **Question the Subject**

Note: If you show documents, number them and attach them to the ROI, Sworn Statement, etc.

- Is there anything you want us to know about why you did something or took some particular action?
- Is there anything you wish to offer that may mitigate the circumstances?

### **Criminal Involvement and False Statements**

- (<u>False Statement Warning</u>). If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

**Military Personnel** <u>subject to UCMJ</u>. I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of the UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct. Do you understand?

**Military and civilian personnel** <u>not subject to UCMJ</u>. I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code. Do you understand?

# **SUBJECT RE-INTERVIEW GUIDE**

### Introduction

- Start recorder. The time is This tape recorded re-interview is being conducted on (date) at (location) The persons present are the witness (name)
and (state others present)
This is a continuation of an interview conducted on (date) as part of DoD/Navy Hotline Investigation # concerning (subject)
- You were previously advised of the role of an inspector general, of restrictions on the use of release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?
- You were also informed that you are not suspected of any criminal offense. During the previous interview, you were put under oath before giving testimony. I do want to remind you that you do not have to answer any question that may tend to incriminate you. You are reminded that you are still under oath and it is a violation of Federal law to knowingly make a false statement under oath.
- Since our previous interview, I have obtained new information about which you have not yet had the opportunity to comment <b>OR</b> Since our previous interview, our investigation has developed unfavorable

information about which you have not yet had the opportunity to testify or present evidence. The unfavorable information is: (advise subject of general nature of all allegations against him/her).

**Question the Subject** 

### SUSPECT INTERVIEW GUIDE

Have ready: Privacy Act Statement

List of documents from interviewee (complaint letter, etc.)

Investigative Plan List of allegations List of questions

Copies of all documents you plan to show to the suspect

## Establish Rapport.

- Identify yourself and show ID or Appointing Letter.

- I/we are here as investigators on behalf of (command) to gather information concerning a hotline complaint. When our investigation is complete, we will file a report.
- We act as impartial fact finders. Our job is to collect and examine all pertinent information and then make an impartial presentation.
- This is an administrative proceeding. We have no authority to impose punishment or to direct any corrective action. Our goal is to establish the truth of allegations or establish that allegations are not true and therefore clear a person's good name.

### General Brief.

- Access to the information we gather is restricted to persons with a need to know to perform their official duties; usually investigators, attorneys, etc. Management officials may also see the report, but only if corrective action is required. Therefore, we cannot guarantee absolute confidentiality. Other than those types of circumstances, we protect your privacy and identity.
- Also, under FOIA & the PA, individuals may request and may be given redacted copies of your statement. That is, they may be given your statement, but identifying information such as your name, address, title, etc., will be omitted.
- As a reminder, all military and federal employees are required to cooperate with official investigations and to answer questions truthfully. So I would like to remind you of the importance of presenting truthful and candid statements. And, I would like you to give me information I need to know, even if I don't ask a specific question.
  - You do not have to answer any question that may tend to incriminate you.
- <u>Military Suspect</u>. Our investigation has determined that you may have committed an offense. During this interview, you may comment on this information and give your side of the story. You may also show me evidence to contradict or explain the allegation(s).

Under Article 31 of the UCMJ: You may remain silent, that is say nothing at all; any statement you make, oral or written, may be used as evidence against you in a trial by court-martial or in other judicial or administrative proceedings; you have the right to consult a lawyer and to have a lawyer present during this interview; you have the right to military legal counsel free of charge; in addition to military counsel, you are entitled to civilian counsel of your own choosing at your own expense; you may request a lawyer at any time during this interview; if you deicide to answer questions without a lawyer present, you may stop the questioning at any time.

Do you understand your right?

Do you want a lawyer?

Are you willing to answer questions?

- Please advise me if your statement contains classified information.

# **Privacy Act**

- Before we begin, I want to discuss and have you sign a Privacy Act statement. Since I will be asking you to furnish personal information about yourself, the Privacy Act of 1974 requires that I inform you of the authority for this requirement (hand statement to interviewee, explain and have them sign).

# **Tape Recording**

- Our interviews are tape recorded for accuracy. But before I turn on the recorder, I want to ask if you have any questions.
  - I also want to record some information that will aide me in preparing an accurate transcript.

Your name:			_ Title
Your command:			Rank/Grade
Your phone number:		Email	
- I will turn on the tape re	ecorder, record some	information and the	n place you under oath.
- The tape recorder is or	ı. My name is	, assigned as a	in investigator for
I am here with n	ny collegue	The date is	s and time is
This is NAVIG case	number (and lo	ocal number	_). I am
interviewing (name, grade, c	ommand)		

- I will now administer the oath. Please raise your right hand. "Do you swear or affirm that the information you will give is true and correct to the best of your knowledge and belief."
  - Do you acknowledge that you are being tape recorded?
  - Please state your name and command.
- You are suspected of the following allegations, which we want to question you about: (advise subject of general nature of all allegations against him/her).
- I previously advised you of your right. Do you understand you right? Do you have any questions? Do you agree to waive them at this time?

### **Question the Suspect.**

Note: If you show documents, number them and attach them to the ROI, Sworn Statement, etc.

- Is there anything you want us to know about why you did something or took some particular action?
- Is there anything you wish to offer that may mitigate the circumstances?

### **Criminal Involvement and False Statements**

- (<u>False Statement Warning</u>). If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

**Military Personnel** <u>subject to UCMJ</u>. I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of the UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct. Do you understand?

**Military and civilian personnel** <u>not subject to UCMJ</u>. I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code. Do you understand?

### SUSPECT RE-INTERVIEW GUIDE

#### Introduction

- Start recorder. The time is This tape recorded re-interview is being conducted on (date) at (location) The persons present are the witness (name)
and (state others present)
This is a continuation of an interview conducted on (date) as part of DoD/Navy Hotline Investigation # concerning (subject)
- You were previously advised of the role of an inspector general, of restrictions on the use of release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?
- During the previous interview, you were put under oath before giving testimony. You are reminded that you are still under oath and it is a violation of Federal law to knowingly make a false statement under oath.
I do want to remind you that you do not have to answer any question that may tend to incriminate you.
- Since our previous interview, I have obtained new information about which you have not yet had the
opportunity to comment <b>OR</b> Since our previous interview, our investigation has developed unfavorable information about which you have not yet had the opportunity to testify or present evidence. The unfavorable information is: (advise subject of general nature of all allegations against him/her).

## **Question the Suspect**

#### **Criminal Involvement and False Statements**

- (<u>False Statement Warning</u>). If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

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**Military and civilian personnel** <u>not subject to UCMJ</u>. I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code. Do you understand?

#### **INTERVIEWEE CLOSING NOTES**

#### Conclude the interview:

- REVIEW AND/OR SUMMARIZE THEIR STATEMENT.
- Is there anyone else I should talk to and why?
- Are there any other documents that I should review?
- Is there anything we haven't discussed that I should know about?
- We are required to protect the privacy of IG investigations and the rights and reputations of all people involved in them. Accordingly, **do not** discuss this matter or reveal information about our discussion.
- Earlier, I advised you that while access is normally restricted to persons with a need to know. However, individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony, under the Freedom of Information Act. If there is such a request, do you consent to the release of your testimony, but not your personal identifying information, such as name, home address, or home phone number, outside of official channels?

### Complainant only.

- What do you want the IG to do for you?
- You will be notified whether we decide to investigate.

You may contact me at:	
Thank you for your assistance.	

# **Sample Privacy Act Statement**

AUTHORITY: Title 10, U.S. Code, Sections 5014 and 5030

**PURPOSE**: To determine the facts and circumstances surrounding allegations or complaints against Naval personnel and/or Navy/Marine Corps activities. To present findings, conclusions, and recommendations developed from investigations and other inquiries to the Secretary of the Navy, CNO, CMC, or other appropriate Commanders. Disclosure of Social Security Account Number is voluntary, and if requested, is used to further identify the individual providing the information.

**ROUTINE USES**: The information is used for the purpose set forth above and may be:

- Forwarded to Federal, State, or local law enforcement agencies for their use;
- Used as a basis for summaries, briefings, or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government;
- Provided to Congress or other Federal, State, and local agencies, when determined necessary.

# MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION:

**For Military Personnel**: Disclosure of personal information is mandatory and failure to do so may subject the individual to disciplinary action.

**For Department of the Navy Civilians**: Failure to disclose personal information in relation to individual's position responsibilities may subject the individual to adverse personnel action.

**For All Other Personnel**: Disclosure of personal information is voluntary and no adverse action can be taken against individuals for refusing to provide information about them.

#### **ACKNOWLEDGMENT**

I understand the provisions of the Privacy Act of	of 1974 as related to me thr	ough the foregoing statement.
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Signature:	
Date:	

# Sample Sworn Statement

DEPARTMENT OF THE NAVY	1. PLACE:
Sworn Statement of	Naval Air Systems Command
Paula Collins	2. Date: July 1, 2003

On 1 July 2003 @ 1245, I was interviewed in-person by Ms. Jean Cook and Mr. John Hays. I am a GS-13, assigned to PMA 277, Commander, Naval Air Systems Command, Washington D.C., Tel: (301) 757-4430; DSN 757; E-mail <a href="mailto:collinspj@navair.navy.mil">collinspj@navair.navy.mil</a>.

Sylvia Chase, Marie Powell and I attended the SPAWAR C4I Summit in San Diego on 1-5 March 2003. We flew out on the 1<sup>st</sup>, attended the Summit the 2-4<sup>th</sup> and flew back on the morning of the 5<sup>th</sup>. While in San Diego, I did have lunch with Sylvia Chase and her friend, Roy Martin, on Wednesday, 3 March at a nearby Mexican restaurant (I don't remember the name). I was anxious to get back to make a few calls before the afternoon session, but I didn't want to drag Sylvia away, so I caught a ride back with two people I recognized from the conference (Toti Papas and Armandina Sanchez). It took a little longer to get back than I expected. We left at about 1235, and got back to the Conference Center at a few minutes before 1300. We had one drink with lunch, and Sylvia and her friend ordered another drink just as I was leaving. I don't recall making any comment about Sylvia to anyone, especially a comment about her capacity to drive. She is a very responsible person, and that kind of comment would be out of character for me. I was concerned however during the afternoon on 3 March because Sylvia did not return and it was not like her to not attend something that important. I thought maybe she had gotten into a car accident or that she was sick. I did not see Sylvia at the conference that afternoon or at any time on the next day 4 March 2003.

I swear (or affirm) that the information I have provided is true and complete.

Paula Collins	
Paula Collins	
Interviewee	

Subscribed and sworn before me on July 1, 2003, in the Inspector General's Office, Naval Air Systems Command, Patuxent River, Maryland.

Jean Cook	_
Jean Cook	-
Investigating Officer	
Executed on	

## Sample Declaration

On 1 July 2003 @ 1245, I was interviewed in-person by Ms. Jean Cook and Mr. John Hays. I am a GS-13, assigned to PMA 277, Commander, Naval Air Systems Command, Washington D.C., Tel: (301) 757-4430; DSN 757; E-mail collinspj@navair.navy.mil.

Pursuant to 28 USC 1746, I, Paula Collins, declare as follows:

Sylvia Chase, Marie Powell and I attended the SPAWAR C4I Summit in San Diego on 1-5 March 2003. We flew out on the 1<sup>st</sup>, attended the Summit the 2<sup>nd</sup>-4<sup>th</sup>, and flew back on Friday morning on the 5<sup>th</sup>. I had lunch with Ms. Sylvia Chase on Wednesday at the Rio Grande around 1200, but that was the last time I saw her at the conference. She did not attend the afternoon working group on 3 March and I did not see her again on Friday. She must have had someone take her to the airport because we shared a rental car and I was unable to get in contact with her to ask her if she needed a ride.

I was advised of the applicable provisions of the Privacy Act, and signed/declined to sign a Privacy Act statement.

I declare under penalty of perjury, 28 U.S.C. 1746, that the foregoing is true and correct. Executed on 2 July 2003.

//s// Paula Collins Ms. Paula Collins

# Sample Results of Interview

2 July 2003 @ 1430. Ms. Jean Cook and Mr. John Hays conducted an in-person interview with Ms. Armandina Sanchez, Conference Attendee, GS-11 Program Analyst, assigned to Commander, Naval Sea Systems Command, Washington DC, Tel: (703) 603-2112 685-2345, DSN 326, home: (703) 519-3012 (unlisted number), E-mail: sanchezal@navsea.navy.mil. Ms. Sanchez was sworn in at the start of the interview. She provided the following information.

Ms. Sanchez stated that on 3 March 2003, at about 1130 or so: the C4I conference she was attending broke for lunch. Ms. Sanchez and Toti Papas went to a Mexican restaurant for lunch. She commented when they finished eating and were about to head back to the conference, Ms. Collins, one of the attendees, asked if she could catch a ride with them. She seemed annoyed. Ms. Sanchez and Mr. Papas said sure.

Ms. Sanchez said when they arrived at the restaurant; Ms. Collins was having lunch with Ms. Chase. There was another person with them who she didn't know; they were sitting about two tables over from them. Ms. Sanchez said she knew Ms. Chase because they had met her at the conference.

Ms. Sanchez stated that the conference was scheduled to restart around 1300, so she and Mr. Papas left the Mexican restaurant around 1230. She stated that Toti figured it would take us about 25 minutes depending on the lunch hour traffic.

Ms. Sanchez didn't notice how much Ms. Chase was drinking but saw the waitress bring an order of margaritas before they left.

Ms. Sanchez said that Ms. Collins, Mr. Papas, and she got back to the Conference Center about 1300. She said she knew it was 1300 because when she walked in some guy was closing the conference doors saying it was time to start. She emphasized they were supposed to start about 1300.

Ms. Sanchez said that was the last time she saw Ms. Chase that day. She does not remember if Ms. Chase attended the afternoon conference session or not.

Ms. Sanchez was advised of applicable provisions of the Privacy Act, Whistleblower Protection, and rights of confidentiality, Ms. Sanchez signed/declined to sign a Privacy Act statement.

# **Sample Forwarding Letter**

5041/N00IG H03-034/Ser 133 3 Oct 03

From: Commander, Naval Air Systems Command (AIR-00G)

To: Naval Inspector General

Subj: DOD HOTLINE COMPLAINT 72033 (20030435): ALLEGED TRAVEL ABUSE AT

COMMANDER, NAVAL AIR SYSTEMS COMMAND

Ref: (a) NAVINSGEN Itr 5041/20030435 Ser N6x/179 of 8 June 03

Encl: (1) Completion Report dtd 22 Sep 03

1. Per reference (a), enclosure (1) is forwarded.

- 2. We are in the process of reviewing the report and investigators recommendations. We will report the disposition when all action is completed.
- 3. Request you extend the suspense date to 5 November 2003. The point of contact is Ms. Jean Cook, Investigations Specialist, at telephone (301) 758-9018 or DSN 288-9018.

# SAMPLE CASE FILE DOD/NAVY HOTLINE COMPLETION REPORT 22 September 2003

- 1. Investigator(s) and Identifying Information and Location of Working Papers
  - a. Investigator(s) and Identifying Information.
- (1) Ms. Jean Cook, GS-13, Investigator, Office of the Inspector General, Commander, Naval Air Systems Command (COMNAVAIRSYSCOM), Tel: (301) 758-9018 or DSN 288-9018, e-mail: jcook@navair.navy.mil.
- (2) Mr. John Hays, GS-12, Investigator, Office of the Inspector General, COMNAVAIRSYSCOM, Tel: (301) 758-8912 or DSN 288-8912, e-mail: ihays@navair.navy.mil.
- **b. Location of working papers.** Commander, Naval Air Systems Command, Office of the Inspector General, Attn: AIR-00G, 22145 Arnold Circle, Unit #7, Bldg 404, Suite 100, Patuxent River, MD 20670-1541

## 2. Background and Summary

- a. Hotline Control #s, Dates of Receipt, and Tasking Dates
- (1) DoD Hotline # 72033 DoD received the complaint on 10 May 2003 and tasked NAVINSGEN on 30 May 2003
- (2) NAVINSGEN # 20030435 NAVINSGEN received DoD complaint # 72033 on 4 June 2003 and tasked COMNAVAIRSYSCOM on 8 June 2003
- (3) NAVAIRSYSCOM Case # H02-034 NAVAIRSYSCOM received the NAVINSGEN tasking letter and complaint on 12 June 2003 and tasked to the IO on 20 June 2003
- **b. Summary of Complaint.** The complainant alleged three COMNAVAIRSYSCOM employees, Ms. Sylvia Chase, Ms. Paula Collins and Ms. Marie Powell, were on temporary duty (TDY) from 1-5 March 2003 while attending a conference in San Diego, California. The complainant alleged that Ms. Chase did not attend the afternoon conference session on 3 March 2003 and did not return to the conference on 4 March 2003. The caller also alleged that Ms. Chase returned to Reagan-National Airport, Washington, D.C., vice Dulles Airport, as scheduled, and did not pay the additional costs for the flight change.
- **c.** Additional Information (Optional). The COMNAVAIRSYSCOM database did not reveal any previous substantiated allegations against Ms. Chase.
- **d. Summary of the outcome of investigation.** Our review of the complaint determined two of the allegations warranted investigation. We substantiated one allegation against Ms. Sylvia Chase. Based on the evidence, we concluded Ms. Chase did not attend the afternoon session of the C4I Conference on 3 March and did not attend the conference on 4 March. We are forwarding the investigation recommending the chain of command take appropriate action to hold Ms. Chase accountable for misusing her official time in violation of Joint Ethics Regulation (JER) § 2635.705 while at the conference.

## e. List of allegations (Optional).

(1) That Ms. Sylvia Chase improperly abused her official time by not attending a working group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2 § 2635.705, Use of Official Time.

- (2) That Ms. Sylvia Chase improperly returned from San Diego to Reagan-National Airport vice Dulles Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of the Joint Travel Regulations (JTR), Chapter 2, § C2001A, Transportation Modes, Accommodations, Transportation Reguests, Baggage and Mileage Rates.
- **3. First allegation.** That Ms. Sylvia Chase improperly abused her official time by not attending a working group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2 § 2635.705, Use of Official Time. **Substantiated**.

#### a. Facts.

- (1) Mr. Taylor Rutkowski, Ms. Chase's supervisor, authorized Temporary Duty orders for her to travel on 1 March 2003 and attend the Space and Naval Warfare Systems Command (SPAWAR), Command, Control, Communication, Computers and Intelligence (C4I) conference in San Diego, California, held from 2-4 March, and to return to her residence on 5 March 2003.
- (2) The Conference Schedule of Events and Presentations listed Ms. Chase as a panel participant for the C4I Network Users' Working Group at 1300 on 3 March 2003. She was also scheduled to be a member of the Network Users' Working Group all day on 4 March 2003.
- (3) Mr. Randall Lopez, the Conference Chairperson and Panel Moderator for the C4I Network Users Working Group, stated Ms. Chase was scheduled to be a panelist on his working group on 3 March 2003 beginning at 1300. He stated she was not seated on the panel during the entire afternoon session, as scheduled. Mr. Lopez stated Ms. Chase called him Wednesday evening to let him know she was ill and apologized for not attending the working group. Mr. Lopez stated Ms. Chase also told him she would not be attending the Thursday working group due to illness.
- (4) Ms. Collins stated that around 1200 on Wednesday, 3 March 2003, Ms. Sylvia Chase drove her to Rio Grande, a nearby restaurant, for lunch where they met Ms. Chase's friend, Mr. Roy Martin. She recalled that she, Ms. Chase, and Mr. Martin ordered margaritas and that Ms. Chase and Mr. Martin ordered a second round of margaritas. She stated that she saw Mr. Toti Papas and Ms. Armandina Sanchez, at the restaurant and asked if she could ride back with them so she could make some phone calls before the afternoon session began. She stated Ms. Chase did not sit on the working group panel on the afternoon of 3 March. She stated she became concerned about her so she called her Wednesday evening, but she did not answer the telephone. Ms. Collins stated she and Ms. Chase were in the same working group on 4 March, but she did not see her there either.
- (5) Ms. Joyce Cranston, a conference participant, stated she sat next to the door during the C4l Network Users Working Group on the afternoon of 3 March 2003. She was quite certain that Ms. Chase was not seated on the panel. She stated she did not see her enter the room at any time during the afternoon session on 3 March. Ms. Cranston also stated Ms. Chase did not attend the working group on Thursday, 4 March.
- (6) Mr. Toti Papas, a conference attendee, stated he attended the Wednesday, 3 March and the 4 March, Network Users' Working Group and that Ms. Chase was not present at either.
- (7) Ms. Powell stated she was not a member of the Network Users' Group so she did not know whether or not Ms. Chase attended either the 3 March or the 4 March sessions. Ms. Powell recollected Ms. Collins asked her on Wednesday evening at dinner whether or not she had seen Ms. Chase and that she seemed concerned about her.

- (8) Ms. Armandina Sanchez stated she went to lunch with Mr. Toti Papas at the Rio Grande on 3 March 2003 around noon. She stated she noticed Ms. Chase having lunch with a man and Ms. Collins and that Ms. Chase was talking loudly. Ms. Sanchez stated she saw the waitress bring margaritas to Ms. Chase's table. Ms. Sanchez recalled Ms. Collins asking for a ride to the conference. She stated Ms. Collins rode back with them. Ms. Sanchez remembers that Ms. Chase was still seated at her table when she, Mr. Papas, and Ms. Collins left the restaurant. Ms. Sanchez stated she was in a different working group located in a different area of the Center on 3 March and 4 March and that she did not see Ms. Chase on either day at the Conference.
- (9) Ms. Chase, stated she had lunch on 3 March 2003 with Ms. Collins and with Mr. Martin, a friend, who lived in the local area. She stated she became extremely ill after lunch and Mr. Martin took her to the emergency room. Ms. Chase stated she had gotten food poisoning from something she ate at the Rio Grande. She stated she was so sick that she could not attend the afternoon session on 3 March. She stated she called Mr. Lopez to explain why she did not come on Wednesday and told him she would not be at the session on Thursday. She stated she forgot to call her supervisor in Washington DC to let him know that she was sick and unable to attend either working group. She stated that she forgot to submit a "Request for Leave" for the sick leave she took while she was in San Diego at the conference.
- (10) Mr. Taylor Rutkowski, Ms. Chase's supervisor, stated that he directed her to be a panelist for the C4I Network User's Working Group during the afternoon session on 3 March 2003 at 1300. Mr. Rutkowski stated Ms. Chase did not inform him when she returned from the conference that she did not sit on the panel, attend the Network Users' Working Group on 3 March, or attend the working group on 4 March 2003. Mr. Rutkowski did not recall Ms. Chase submitting a leave slip for her absence on those days.
- (11) The COMNAVAIRSYSCOM time and attendance records do not show that Ms. Chase submitted a "Request for Leave" for 3 March or 4 March 2003.
- (12) Mr. Roy Martin, a civilian (non-government) friend, had lunch with Ms. Chase and Ms. Collins on 3 March 2003. He declined to be interviewed.
- (13) JER § 2635.705 states that an employee shall use official time in an honest effort to perform official duties.

#### b. Analysis/Discussion/Conclusion.

- (1) Ms. Chase was on official government orders to attend the C4I Conference from 1 to 5 March 2003 and her supervisor had directed her to participate in the working groups on 3 and 4 March.
- (2) Mr. Lopez, Ms. Collins, Mr. Papas, and Ms. Cranston testified Ms. Chase was not seated on the panel during the Network Users' working group on the afternoon of 3 March.
- (3) Mr. Lopez, Ms. Collins, Mr. Papas and Ms. Cranston testified Ms. Chase did not attend the Network Users' Working Group on 4 March.
- (4) According to Ms. Chase, she got sick during lunch at the Rio Grande restaurant on Wednesday, 3 March, and was unable to return to the conference on Wednesday afternoon and Thursday. Although she called Mr. Lopez, the Conference Chairperson, to let him know why she was not at the working group and to tell him she would not attend the Thursday session, she did not tell her supervisor, Mr. Rutkowski, or submit a leave request for those days.

- (5) Ms. Chase did not use her official time in accordance with JER § 2635.705. She did not sit on the panel at the Network Users' Working Group on the afternoon of 3 March, as scheduled, she did not attend the working group on Thursday, 4 March, and she did not submit a leave request to account for her failure to perform official duties during official time. Based on this evidence, we substantiated the allegation.
  - **c. Recommendations.** Take appropriate administrative action to hold Ms. Chase accountable.
  - **d. Disposition.** Forwarded to higher authority for appropriate administrative and/or corrective action.
- **4. Second allegation.** That Ms. Sylvia Chase returned from San Diego to Dulles Airport vice Reagan-National Airport and incurred an additional cost for the flight change and fare increase at government expense, for which she improperly claimed reimbursement on her travel voucher dated 7 March 2003, in violation of 2 JTR, Joint Travel Regulations. **Unsubstantiated**.

#### a. Facts.

- (1) The San Diego to Dulles Airport flight is a direct, five and one-half hour, government-contract flight. The San Diego to Reagan-National Airport flight is a seven-hour, non-government-contract flight with an en route stop in Chicago.
- (2) Ms. Chase stated she changed her reservation for the return flight from Dulles Airport to Reagan-National because it was closer to her home in Alexandria, Virginia. She stated she preferred to use Reagan-National because she would not have to have someone pick her up at the Dulles Airport or take a long taxi ride to her home, which would take about 45 minutes. She stated she was willing to pay the extra amount for the convenience of returning to Reagan-National Airport. She stated she called the SATO Help Desk to change her flight. Ms Chase stated she paid the \$50.00 penalty fee to change the reservation and the \$65.00 fare increase with her personal credit card. She stated did not include a request for reimbursement on her travel claim since she paid the penalty fee and fare increase.
- (3) 2 JTR § C2001A.2., Selecting Method of Transportation to be Used, states, in part: "Except as noted herein, the use of discount fares offered by contract air carriers between certain cities (city-pairs) is advantageous to the Government and is mandatory for authorized air travel between those city-pairs. If a contract city-pair fare is not available, the least expensive unrestricted fare ... should be used."
- (4) 2 JTR § C2001A 3. d., Traveler's Cost Liability When Selected Method not Used, states, in part: "The employee shall use the method of transportation administratively authorized/approved by the DoD component concerned as most advantageous to the Government. Any additional cost resulting from the use of a method of transportation other than specifically authorized/approved, or required by regulation, e.g., contract air service, is the employee's responsibility."
- (5) Ms. Lisa Ponds, SATO representative, stated that in accordance with 2 JTR, they are required to book employees on government TDY using government contract flights, if available, via the closest servicing airports. Based on this regulation, SATO was required to route Ms. Chase from San Diego to Dulles Airport. Ms. Ponds stated that an employee could elect to use another flight if they paid the additional increased fare, did not charge the government, or if the command authorized other travel arrangements on the orders.
- (6) Mr. Taylor Rutkowski, Ms. Chase's supervisor stated he authorized Ms. Chase to vary her travel arrangements on the orders dated 23 February 2003. He further stated he had discussed this with Ms. Chase and that she had told him she "took care of" the additional fees.
- (7) Review of Ms. Chase's travel claim confirmed that she did not request reimbursement for the additional fees she incurred as a result of the flight change.

## b. Analysis/Discussion/Conclusion.

- (1) Ms. Chase changed her return flight from the government contract flight to the non-contract flight because it was closer to her home; knowing her supervisor gave her the authority to change the orders and she was responsible for any additional fees. In accordance with 2 JTR § C2001A, she was authorized to make the change if she paid the additional penalty fee and fare increase.
- (2) Mr. Rutkowski, Ms. Chase's supervisor, authorized her to vary her travel arrangements on the travel orders. Ms. Chase paid the penalty fee and fare increase for her travel from San Diego to Reagan-National Airport using her personal credit card and did not claim the additional expenses on her 7 March 2003 travel voucher. Based on this evidence, the allegation is unsubstantiated.
  - c. Recommendations. None.
  - d. Disposition. None.
- 5. Interviews and Documents
  - a. Interviews conducted. (All interviews conducted in person unless otherwise noted.)
- (1) Ms. Sylvia Chase (subject), COMNAVAIRSYSCOM Deputy Program Manager, PMA 277, GS-
  - (2) Ms. Paula Collins (witness), COMNAVAIRSYSCOM Level II Team Leader, PMA 277, GS-13
  - (3) Ms. Marie Powell (witness) COMNAVAIRSYSCOM Program Analyst, PMA 277, GS-11
  - (4) Mr. Taylor Rutkowski (witness), COMNAVAIRSYSCOM Program Manager, PMA 277, GS-15
- (5) Mr. Randall Lopez (witness), Conference Chairperson and Panel Moderator (Telephone Interview)
  - (6) Ms. Armandina Sanchez (witness), Conference Attendee
  - (7) Mr. Toti Papas (witness), Conference Attendee
  - (8) Ms. Joyce Cranston (witness), Conference Attendee (Telephone Interview)
  - (9) Ms. Lisa Ponds, Scheduled Airlines Travel Office (SATO)

## b. Documents reviewed.

- (1) Joint Travel Regulations, Volume 2 (2 JTR) §§ C2001A
- (2) Joint Ethics Regulation (JER), Chapter 2 § 2635.705
- (3) Ms. Sylvia Chase's travel order (#67895) dated 23 February 2003 and related travel voucher dated 7 March 2003, receipts/attachments and Defense Finance and Accounting System (DFAS) Travel Voucher Summary
  - (4) COMNAVAIRSYSCOM March 2003 time and attendance
  - (5) List of Conference attendees
  - (6) Conference Schedule of Events and Presentations
  - (7) Privacy Act statements

## Sample Disposition Letter

5041/N00IG H03-034/Ser 165 8 Nov 03

From: Commander, Naval Air Systems Command (AIR-00G)

To: Naval Inspector General

Subj: DOD HOTLINE COMPLAINT 72033 (20030435): ALLEGED TRAVEL ABUSE AT

COMMANDER, NAVAL AIR SYSTEMS COMMAND

Ref: (a) NAVINSGEN ltr 5041/20030435 Ser N6x/179 of 8 June 03

(b) COMNAVAIRSYSCOM ltr 5041/N00IG H03-034/Ser 133 of 3 Oct 03

- 1. Reference (a) was the originally tasking letter in this case and reference (b) forwarded the Completion Report.
- 2. We have completed the following action in this case:
- a. <u>First allegation</u>. That Ms. Sylvia Chase abused her official time by not attending a Working Group she was required to attend on the afternoon of 3 March 2003, and an all day working group on 4 March 2003, in violation of DoD Instruction 5500.7-R, Joint Ethics Regulation (JER), Chapter 2, Use of official time. **Substantiated**.

Recommendations. Take appropriate administrative action to hold Ms. Chase accountable.

<u>Disposition</u>. Ms. Chase was given a written letter of caution from the Director, Naval Air Systems Command, PMA 277 on 26 September 2003. Moreover, she submitted a leave request to account for time lost on 3 and 4 March 2003.

3. This completes all action in this case and we have closed our case.